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**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
DESERT PEAK HOMEOWNERS ASSOCIATION**

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**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
DESERT PEAK**

This Declaration of Covenants, Conditions, Restrictions and Easements (as amended from time to time, the "Declaration") is made on the 20th day of JUNE, 2006, by CHI Construction Company, an Arizona corporation (the "Declarant").

RECITALS

A. Declarant is the owner and developer of certain real property (the "Parcel") located in the City of Phoenix, Maricopa County, Arizona, described as follows:

Lots 1 through 142, inclusive, and Tracts A through R, inclusive, of Desert Peak Unit 1, according to that certain plat of subdivision (the "Unit 1 Plat") recorded in Book 808 of Maps, at page 35, in the official records of Maricopa County, Arizona.

Lots 1 through 139, inclusive, and Tracts A through Q, inclusive, of Desert Peak Unit 2, according to that certain plat of subdivision (the "Unit 2 Plat") recorded in Book 836 of maps, at page 39, in the official records of Maricopa County, Arizona.

B. Declarant desires and intends that the Parcel, and any land annexed to it as provided herein, and all buildings and other Improvements now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which, collectively, constitute the "Property"), shall be subject to the reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens provided for herein, that are for the purpose of protecting the value and desirability of, and that shall run with, the Property and be binding on all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each "Owner" provided for herein.

C. Declarant desires and intends that an Arizona nonprofit corporation be formed to be the "Association" provided for herein, to manage and operate the Property and to perform other duties provided for herein as a homeowners' association.

DECLARATIONS

NOW, THEREFORE, Declarant hereby declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the provisions of this Declaration.

ARTICLE 1

DEFINITIONS

- 1.1 "Alleged Defect" is defined in ARTICLE 15.
- 1.2 "Alleged Defect Costs" is defined in Section 15.3.
- 1.3 "Annexable Property" means any other land within one mile of the Parcel.
- 1.4 "Architectural Committee" means the committee established by the Board pursuant to Section 7.1 of this Declaration.
- 1.5 "Architectural Committee Rules" means any rules adopted by the Architectural Committee.
- 1.6 "Area of Association Responsibility" means any area that is not owned, leased or otherwise held by the Association (and, therefore, is not part of the Common Area) but for which the Association has maintenance, repair and/or operational responsibility by the terms of this Declaration, or Supplemental Declaration, or any other applicable real property covenants, requirements of governmental authorities, or by contract.
- 1.7 "Articles" means the Articles of Incorporation of the Association that have been or will be filed with the Arizona Corporation Commission, as they may be amended from time to time.
- 1.8 "Assessment" means any annual, special, neighborhood or lot specific Assessment levied and assessed against a Lot and the owner thereof pursuant to ARTICLE 5 of this Declaration.
- 1.9 "Assessment Lien" means the lien granted to the Association by this Declaration to secure the payment of Assessments and all other amounts payable to the Association under the Project Documents.
- 1.10 "Association" means the Arizona nonprofit corporation organized or to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "Desert Peak Homeowners Association," but if that name is not available, Declarant may organize the Association under such other name as Declarant deems appropriate.
- 1.11 "Association Rules" (or "Rules") means the rules and regulations adopted by the Association, as amended from time to time.
- 1.12 "Board" means the Board of Directors of the Association.
- 1.13 "Builder" means a person or entity that constructs or causes the construction of homes on one or more Lots within the Property for sale to Purchasers that Declarant elects, in its

sole and absolute discretion, to name as a "Builder" in a written notice to the Association. In any written notice naming a Builder, Declarant shall specify what special rights, privileges, obligations and exemptions of Declarant that particular Builder will have pursuant to the Project Documents. Declarant may revise, alter, supplement or rescind the rights, privileges, obligations and exemptions previously given to a Builder by delivering written notice to the Association detailing any revisions, alterations, supplements, or rescissions.

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

1.15 "Claimant" means any person asserting a claim about an alleged defect in the construction of Improvements, as described in Section 15.1.

1.16 "Common Area" means all real property, together with all Improvements situated thereon, owned, leased, or otherwise held by the Association for the common use and enjoyment of the Owners. Initially, the Common Area shall consist of the following:

Tracts A through R, as shown on the Unit 1 Plat, and Tracts A through Q, as shown on the Unit 2 Plat.

Any land described as being "common areas" in any Supplemental Declaration, or subdivision plat, shall be deemed to be included in the term "Common Area" for purposes of this Declaration.

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

1.18 "Declarant" means CHI Construction Company, an Arizona corporation, and its successors and assigns, or any person to whom Declarant's rights hereunder are assigned in whole or in part by recorded instrument, or any mortgagee of Declarant that acquires title to or succeeds to the interest of Declarant in any Lot or other portion of the Property by reason of the foreclosure (or conveyance in lieu of foreclosure) or trustee's sale under any Mortgage. An assignment by recorded instrument of part of Declarant's rights shall vest in the assignee all of Declarant's rights hereunder on the same terms that they were held by Declarant. An assignment by recorded instrument of part of Declarant's rights shall vest in the assignee the specific rights named in the instrument of assignment on the same terms they were held by Declarant. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Declarant's rights, or a sharing of those 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. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successor Declarant, in which event the preceding Declarant shall be released from liability.

1.19 "Declaration" means this instrument, as amended from time to time.

1.20 "Developer" means any of those persons identified in ARTICLE 15.

1.21 "Dispute" is defined in Section 15.4.

1.22 "Disputing Party" is defined in Section 15.4.2.

1.23 "First Mortgage" means any mortgage, deed of trust, or contract for deed on a Lot that has priority over all other mortgages, deeds of trust and contracts for deed on the same Lot. A contract for deed is a recorded agreement whereby the purchaser of a Lot acquires possession of the Lot but does not acquire legal title to the Lot until a deferred portion of the purchase price for the Lot has been paid to the seller.

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

1.25 "Improvement" means buildings, structures, roads, driveways, parking areas, fences, walls, decorative rocks, hedges, plantings, planted trees and shrubs, grading or shaping of the land, and all other structures or landscaping of every type and kind.

1.26 "Lot" means any subdivided lot shown on a Plat. Any reference to a "Lot" shall be understood to include any residence, garage, and other Improvements located on the land. Notwithstanding anything to the contrary herein, if a portion of the Property shown as a Lot on a Plat is owned by the Association and used for open space or other purpose generally benefiting the Owners, it shall be considered part of the Common Area (as that term is defined herein) notwithstanding its designation on the Plat.

1.27 "Majority of Members" means the Members holding more than 50% of the total votes entitled to be cast by all Members (including, unless otherwise specified herein, by Declarant).

1.27.1 Any specified fraction or percentage "of the Members" means the Members holding that fraction or percentage of the total votes entitled to be cast by Members (including, unless otherwise specified herein, by Declarant).

1.27.2 A "Majority of a Quorum of Members" means the Members holding more than 50% of the total votes entitled to be cast by the Members (including, unless otherwise specified herein, by Declarant) who are present (in person or by proxy) at a meeting at which a quorum of Members (as defined in the Bylaws) is present. In the event votes are taken by written ballot in lieu of a meeting, a "Majority of a Quorum of Members" means the Members holding more than 50% of the total votes entitled to be cast by the Members (including, unless otherwise specified herein, by Declarant) who complete and return a written ballot when written notice is given to all Members and at least a quorum of written ballots is returned.

1.27.3 Unless otherwise specified herein or in the Bylaws, any provision hereof requiring the consent or approval of the Members means the consent or approval of a "Majority of a Quorum of Members."

1.28 "Member" means any person, corporation, partnership, limited liability company, joint venture or other legal entity that is a member of the Association.

1.29 "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration (that 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.

1.30 "Notice of Alleged Defect" means the notice from a Claimant required by Section 15.1.1.

1.31 "Occupant" means any person occupying the Residential Unit on a Lot as a tenant, guest or otherwise with the permission of the Owner.

1.32 "Owner" means the record owner, except as provided below, whether one or more individuals or entities, of fee simple title to any Lot including, but not limited to, one who is buying a Lot under a recorded contract, but excluding others having an interest merely as security for the performance of an obligation. If fee simple title is vested of record in a trustee pursuant to a trust agreement, the beneficiary entitled to possession shall be deemed to be the Owner. The term "Owner" shall not be deemed to refer to any Occupant occupying a Lot but not holding title to it.

1.33 "Parcel" means the real property described in the Recitals hereof.

1.34 "Plat" means (a) the final plat of Desert Peak Unit 1 recorded in Book 808 of Maps, Page 35, Recording Number 2006-0110497, in the official records of Maricopa County, Arizona, and any amendments thereto, (b) the final plat of Desert Peak Unit 2 recorded in Book 836 of Maps, Page 39, Recording Number 2006-0642536, in the official records of Maricopa County, Arizona, and any amendments thereto, and (c) any other recorded subdivision plat applicable to any portion of the Property.

1.35 "Project" means the Property together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

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

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

1.38 "Related Parties" means subsidiaries, parent entities, and other affiliates of Declarant.

1.39 "Residential Unit" means any building, house or dwelling unit, including any appurtenant garage or storage area, situated upon a Lot that is designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

1.40 "Single Family" shall mean an individual living alone, a group of 2 or more persons each related to the other by blood, marriage or legal adoption, or a group of not more

than 3 persons not all so related, together with their domestic servants, who maintain a common household in a Residential Unit.

1.41 "Single Family Residential Use" shall mean the occupation or use of a Residential Unit by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.42 "Supplemental Declaration" means a declaration of covenants, conditions and restrictions, or similar instrument, annexing land to the Property and subjecting it to this Declaration as provided herein.

1.43 "Termination of Negotiations" is defined in Section 15.4.2.

1.44 "Transition Date" means 90 days following the date on which the Class B membership of Declarant ends pursuant to Section 4.3 and is converted to Class A membership.

1.45 "Visible from Neighboring Property" means that an object is or would be visible to a person 6 feet tall standing on a neighboring Lot or street at an elevation not greater than the elevation at the base of the object being viewed.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 Property Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the land within the Property, whether originally or when added by annexation pursuant to the terms hereof, shall be held, sold and conveyed subject to this Declaration. Each person accepting a deed or acquiring any interest in any of the Property subject to this Declaration, binds himself, and his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration (including any amendments hereof). In addition, each such person acknowledges that this Declaration sets forth a general plan for the development and use of the Property and evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof.

2.2 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans of the Project as they exist on the day this Declaration is recorded; (ii) any property subject to this Declaration will be committed to or developed for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

ARTICLE 3

THE ASSOCIATION; RIGHTS AND DUTIES

3.1 Rights, Powers and Duties. The Association shall be an Arizona nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents, together with such other rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

3.2 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws.

3.3 Association Rules. The Board may, from time to time (subject to the provisions of this Declaration), adopt, amend and repeal rules and regulations (all of which, collectively, while effective shall constitute the "Association Rules" regardless of whether they are so labeled). The Association Rules may restrict and govern the use of any area by any Owner, by the family of an Owner, or by any invitee, licensee or lessee of an Owner except that the Association Rules may not discriminate among similarly situated Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. A copy of the current Association Rules shall be available for inspection at any reasonable time in the offices of the Association or such other location as the Board may reasonably designate. When any addition, amendment, or repeal of the Association Rules is adopted, a copy thereof shall be mailed or otherwise provided to each Owner.

3.4 Termination of Contracts and Leases. A contract for any of the following, if entered into by the Association prior to the expiration of the Class B membership in the Association, may be terminated by the Association at any time after the expiration of the Class B membership on 30 days written notice to the other party:

3.4.1 Any management contract, employment contract or lease of recreational or parking areas or facilities.

3.4.2 Any contract or lease, including franchises and licenses, to which Declarant or any affiliate of Declarant is a party.

3.5 Association Spending. The Association shall not be obligated to spend in any year all sums received by it in that year, regardless of the source. The Association may carry forward as additional working capital or reserves any remaining balances. The Association shall not be obligated to reduce the amount of Assessments for the following 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, determines to be desirable for the greater financial security of the Association and the accomplishment of its purposes. The Board shall provide for such financial

audits, reviews or compilations of the Association's funds and expenditures as may be required by law.

3.6 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 advisable to do so for reasons of obtaining better rates or terms of service or for other reasons deemed reasonable by the Board. If the Board makes such a designation, the Association may enter into an agreement with the designated service provider. 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 Assessments payable by each Owner provided, however, that the Board may allocate such costs between improved and unimproved properties, or among neighborhoods within the Property, in such 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 shall have an easement over the Common Area to the extent necessary or convenient for the efficient delivery of the designated services.

3.7 Rights of Enforcement. The Board shall have the exclusive right to enforce the Project Documents and any other documents applicable to the Property that indicate their terms are intended to be enforced by or to benefit the Association. If the Board fails or refuses to enforce any such document for an unreasonable period of time after receiving written request from an Owner to do so, then the 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 other provision of this Declaration or any of the other Project Documents, Declarant shall have no obligation to undertake any such enforcement actions and shall not be deemed a guarantor of enforcement.

3.8 Change of Common Area Use. The Board shall have the power and authority to change the use of any portion of the Common Area upon compliance with both of the following procedural requirements:

3.8.1 Adoption of a resolution by the Board stating that the current use of the specified portion of the Common Area is no longer in the best interest of the Owners; and

3.8.2 Approval by a majority of votes of each class of Members, voting in person or by proxy at a meeting where a quorum of Members is present (in person or by proxy).

If such a change is directed by the Board, the Board shall also have the power and authority to take whatever other actions may be reasonably required to implement the new use. Any such new use must continue to be for the common benefit of the Owners and consistent with applicable zoning and other legal requirements.

3.8.3 In lieu of a meeting of Members, the Board (following satisfaction of the requirements of Section 3.8.1) may give written notice to all Members of the proposed change

and the Members' right to object to it. The proposed action shall be deemed approved by the Members following this notice (without the necessity of a meeting) unless, within 30 days following the date on which the notice is given, Members holding more than 10% of the votes eligible to be cast deliver written objections to the Association, in which case the requirements of Section 3.8.2 must be satisfied.

3.9 Transfer of Common Area.

3.9.1 The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public authority or utility if (i) the transfer or dedication does not have a substantial adverse impact on the enjoyment of the Common Area by the Owners, or (ii) required by a recorded subdivision plat, a zoning stipulation or an agreement with governmental authorities, effective before the date hereof. Except as authorized in (i) or (ii) above, no dedication or transfer of Common Area shall be effective without approval of a majority of votes of each class of Members, voting in person or by proxy at a meeting where a quorum of Members is present (in person or by proxy).

3.9.2 The Association shall have the right to change the size, shape or location of the Common Area, to exchange the Common Area, and to abandon or otherwise transfer the Common Area to a recipient other than a public authority or utility upon compliance with the following procedural requirements:

(a) Adoption of a resolution by the Board stating that ownership and/or use of the specified portion of the Common Area is no longer in the best interest of the Owners, and that the proposed change shall be for their benefit and shall not substantially affect them adversely; and

(b) Approval by a majority of votes of each class of Members, voting in person or by proxy at a meeting where a quorum of Members is present (in person or by proxy).

(c) In lieu of a meeting of Members, the Board (following satisfaction of the requirements of Section 3.9.2(a)) may give written notice to all Members of the proposed action and the Members' right to object to it. The proposed action shall be deemed approved by the Members following this notice (without the necessity of a meeting) unless, within 30 days following the date on which the notice is given, Members holding more than 10% of the votes eligible to be cast deliver written objections to the Association, in which case the requirements of Section 3.9.2(b) must be satisfied.

3.10 Fines. The Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for violation of any provision of the Project Documents by any Owner or an Owner's lessees, licensees and invitees. No fine shall be imposed without first providing a written notice to the affected Owner and a reasonable opportunity for hearing, pursuant to procedures adopted by the Board and applied equitably. Any fine levied by the Board shall be due at such time as may be specified by the Board, but in no event less than 30 days following imposition, and shall constitute a lien on all Lots owned by the Owner if not paid

when due. Failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any Assessments under ARTICLE 5.

3.11 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 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 Architectural Committee), or any settlement of any such proceeding:

3.11.1 Every director and officer of the Association;

3.11.2 Every member of the Architectural Committee and other committees of the Association;

3.11.3 Declarant; and

3.11.4 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 a 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, 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 the person's duties. These rights of indemnification shall be in addition to, and not exclusive of, all other rights to which the person may be entitled at law or otherwise.

3.12 Association Property. The Association may acquire, hold and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real property located within the Project, personal property and leasehold and other property interests. Any such property transferred from Declarant shall be accepted by the Association and thereafter maintained as Common Area or personal property of the Association as a Common Expense, subject to any restrictions set forth in the deed or other instrument of conveyance and this Declaration or other instrument of record at the time title to the property was received by the Association.

3.13 Waiver. No failure by the Association, the Board or any committee to exercise any right or privilege provided for in this Declaration, or to require timely performance of any obligation herein in strict accordance with the provisions hereof, shall preclude the exercise of such rights or privileges or the enforcement of such obligations in different circumstances or upon the reoccurrence of the same or similar circumstances. Moreover, the exercise of any remedy provided for at law, in equity, or in this Declaration shall not impliedly preclude the

exercise of any other remedy except when, and then only to the extent that, the other remedy is expressly forbidden or limited by the provisions hereof.

3.14 Relations with Adjacent Properties. The Association may enter into covenants or agreements with the owners of adjacent or nearby real property to create easements over and across such property for the benefit of the Association and its Members and obligate the Association and its Members to share the costs of maintaining such property.

ARTICLE 4

MEMBERSHIP AND VOTING RIGHTS

4.1 Identity of Members. Membership in the Association shall be limited to Owners of Lots that are subject to Assessments. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as ownership of the Lot ceases for any reason, at which time the Owner's membership in the Association shall automatically cease and pass to the succeeding Owner of the same Lot.

4.2 Transfer of Membership. Membership in the Association shall be appurtenant to the Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the conveyance of a Lot and then only to the new Owner of the Lot. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

4.3 Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all of the Owners, with the exception of Declarant and each Builder until the termination of the Class B membership. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B Members shall be Declarant and each Builder. The Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever first occurs:

4.3.1 When the total votes outstanding in Class A membership equals or exceeds the total votes outstanding in Class B membership; or

4.3.2 December 31, 2016; or

4.3.3 When Declarant and each Builder notifies the Association in writing that it relinquishes its Class B membership.

4.4 Joint Ownership. When more than 1 person is the Owner of any Lot, all such persons shall be Members. The vote for any such jointly owned Lot shall be exercised as the collective Owners determine, but in no event shall more than 1 ballot be cast with respect to any

Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will be conclusively presumed for all purposes that the person casting the vote was acting with the authority and consent of all other Owners of the same Lot. In the event more than 1 ballot is cast for a particular Lot, none of the votes shall be counted and the votes shall be deemed void.

4.5 Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other legal entity, the corporation, partnership or entity shall be a Member and shall designate an individual to have the power to vote for the Owner. Until such a designation is made, the Owner shall not have the power to vote the membership. Any such Owner shall have the right to change its designation of a voting representative from time to time by written notice to the Association, subject to such limitations on frequency and other matters as the Board may reasonably impose.

4.6 Suspension of Voting Rights. No Owner shall be entitled to exercise voting rights as a Member of the Association during any period in which the Owner is delinquent in the payment of Assessments or other sums payable to the Association pursuant to the Project Documents including, but not limited to, any costs of collection.

4.7 Approval of Members. Unless otherwise specifically provided in the Project Documents, any provision of the Project Documents that requires the vote or assent of the Members shall be deemed satisfied as follows:

4.7.1 The vote in person or by proxy of the specified percentage of votes cast at a meeting of Members that is duly called and noticed pursuant to the terms of the Project Documents; or

4.7.2 The written consent of the specified percentage of votes cast by written ballot following notice to Members in accordance with the terms of the Project Documents.

4.7.3 If no percentage of votes is otherwise specified, the vote or written consent of a Majority of a Quorum of Members shall be required.

4.8 Declarant Approval Required. After the termination of the Class B membership pursuant to Section 4.3 above, and for so long as Declarant owns any Lot, any action for which the consent or approval of the Board is required under this Declaration may be taken only if such action is also consented to or approved by Declarant.

ARTICLE 5

COVENANT FOR MAINTENANCE ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association annual Assessments, special Assessments, and any applicable neighborhood Assessments and lot

specific Assessments. The annual, special, neighborhood and lot specific Assessments, together, with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

5.2 Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for (i) the upkeep, maintenance and improvement of the Common Area and Areas of Association Responsibility, (ii) maintenance, repair, replacement, and operation of rights-of-way and easements within or immediately adjacent to the Project (e.g. landscaping and sidewalks within the right-of-way of adjoining streets) to the extent that such actions are required by government entities or deemed appropriate by the Association's Board of Directors, (iii) promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property, and (iv) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents. Notwithstanding the foregoing, neighborhood Assessments shall be used only for the benefit of the neighborhood paying such Assessments, shall not be used for any purpose that is covered by annual Assessments or special Assessments in other areas of the Property, and shall be accounted for separately from annual and special Assessments.

5.3 Annual Assessment.

5.3.1 For each fiscal year of the Association, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds that the Board believes to be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Area and Areas of Association Responsibility, (ii) the cost of wages, materials, insurance premiums, services, supplies and maintenance or repair of the Common Area and Areas of Association Responsibility and for the general operation and administration of the Association, (iii) the amount required to render to Owners all services required to be rendered by the Association under the Project Documents, and (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacement.

5.3.2 For each fiscal year of the Association commencing upon the first to occur of (i) transfer to and acceptance for maintenance by the Association of any Common Area or (ii) conveyance of a Lot to a Purchaser, the total amount of the estimated Common Expenses shall be assessed by the Board. Except to the extent that this Declaration expressly provides for reduced Assessments and for neighborhood Assessments only on Lots benefiting from such neighborhood Assessments, all Assessments shall be equal on all Lots.

5.3.3 An Owner other than Declarant or a Builder shall be obligated to pay only 25% of the annual Assessment attributable to the Owner's Lot until the earlier of (i) the date on which a certificate of occupancy or similar permit is issued by the appropriate governmental

authority, (ii) 6 months from the date on which a building permit is issued by the appropriate governmental authority for construction of a Residential Unit on the Lot, or (iii) 2 years after the Lot was conveyed to the Owner by the Declarant. If a Lot ceases to qualify for the reduced 25% rate of Assessment during the period to which an annual Assessment is attributable, the annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment period that the Lot qualified for each rate.

5.3.4 Declarant and each Builder shall be obligated to pay only 25% of the annual Assessment attributable to Lots owned by Declarant and each Builder until the Transition Date. If a Lot ceases to qualify for the reduced 25% rate of Assessment during the period to which an annual Assessment is attributable, the Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment period that the Lot qualified for each rate.

5.3.5 Until the Transition Date, Declarant and each Builder shall pay to the Association any amounts that, in addition to the annual Assessments levied by the Association, may be required by the Association in order for the Association to fully perform its duties and obligations under the Project Documents, including the obligation to maintain adequate reserve accounts. Any such shortfalls shall be allocated between Declarant and each Builder prorata based on the relative number of Lots owned at either the beginning of the period for which the shortfall occurred. Notwithstanding the foregoing, neither Declarant nor any Builder shall have an obligation to pay any amounts during any calendar year in excess of the amount that Declarant or the Builder would have paid if its payments were made on the same basis as other Owners of Lots. Any payments made by Declarant to fund the estimated amounts due under this Section in excess of Declarant's actual funding obligation under this Section shall, at Declarant's option, be credited toward payment of Declarant's next due Assessment payment or refunded to Declarant.

5.3.6 The Board shall give notice of the annual Assessment to each Owner at least 30 days prior to the beginning of each fiscal year of the Association, but the failure to give notice shall not affect the validity of the annual Assessment established by the Board nor relieve any Owner from the Owner's obligation to pay the annual Assessment.

5.3.7 If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, but not limited to, nonpayment of Assessments by Members, it may increase the annual Assessment for that fiscal year and the revised annual Assessment shall commence on the date designated by the Board except that no increase in the annual Assessment for any fiscal year that would result in the annual Assessment exceeding the maximum annual Assessment for the fiscal year shall become effective unless it is approved by Members casting at least 2/3 of the votes cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

5.3.8 The maximum annual Assessment for each fiscal year of the Association shall be as follows:

(a) Until December 31, 2006, the maximum annual assessment shall be One thousand four hundred four dollars (\$1,404.00) per Lot.

(b) From and after January 1, 2007, the maximum annual Assessment will automatically increase during each fiscal year of the Association by the greater of (a) ten percent (10%) of the maximum annual Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (All Items) U.S. Town Average, published by the United States Department of Labor, Bureau of Labor Statistics (1982 - 84 = 100) (the "Consumer Price Index").

In the event the Consumer Price Index ceases to be published, then the index that shall be used for computing the increase in the maximum annual Assessment permitted under this subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor index is recommended by the United States government, the index selected by the Board.

(c) The increase in the maximum annual Assessment pursuant to this Section 5.3.8 shall be calculated without considering the portion of the immediately preceding annual Assessment attributable to the payment of utility charges or insurance premiums by the Association. In addition to the increase in the maximum annual Assessment calculated as described above, the maximum annual Assessment shall include an increase for each fiscal year from and after January 1, 2008, in an amount equal to the amount in the Association budget for the prior fiscal year applicable to utility charges and insurance premiums, multiplied by the percentage increase in utility charges or the percentage increase in insurance premiums during the prior fiscal year, whichever is greater.

(d) Notwithstanding the foregoing, the Board shall not levy an annual Assessment that is more than twenty percent (20%) greater than the immediately preceding fiscal year's annual Assessment without the approval of Owners owning a majority of the Lots.

5.4 Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any fiscal year, a special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such special Assessment has the assent of Members having at least 2/3 of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. Special Assessments shall be levied at a uniform rate for all Lots.

5.5 Notice and Quorum for Any Action Authorized Under Sections 5.3 or 5.4. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of the Members is required under Sections 5.3 and 5.4 shall be sent to all Members not less than 30 days and not more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast 60% of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding

quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

5.6 Date of Commencement of Annual Assessments; Due Dates. The annual Assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the annual Assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association or the Association's designated agent setting forth whether the Assessments on a specified Lot have been paid.

5.7 Neighborhood Assessments. The Board shall have the right to levy neighborhood Assessments against Lots in any specific area of the Property in order to provide for the repair, replacement, operation and maintenance of Common Area within that particular area that are different from or in addition to the types of Common Area in the balance of the Property and that are designed to benefit less than all of the Property (e.g., private streets, separate entryways or gates, enhanced landscaping, community centers, swimming pools). Any such determination by the Board shall be made in a writing specifying the purposes of the neighborhood Assessment and the Lots subject thereto. Any such determination by the Board may also include an additional imposition on such Lots pursuant to Section 5.15 in order to fund a reserve account for the specific Improvements intended to be maintained by the neighborhood Assessment.

5.8 Lot Specific Assessments. The Board shall have the right to levy Lot specific Assessments against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot that are necessary to cure or remedy a breach or violation of the Project Documents and that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be lot specific Assessments.

5.9 Effect of Non-payment of Assessments; Remedies of the Association.

5.9.1 Any Assessment, or any installment of an Assessment, not paid within 30 days after the Assessment, or the installment of the Assessment, first became due shall have added to it the greater of (i) interest from the due date at the rate of 10% per annum, or (ii) a late charge of \$15.00. Any amounts paid by a Member shall be applied first to late charges or interest and then to unpaid principal. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which it was imposed. The Assessment Lien may (but shall not be required to) be placed of record by the recordation of a "Notice of Claim of Lien," which shall set forth (i) the name of the delinquent Owner as shown on the records of the Association, (ii) the legal description and/or street address of the Lot against which the claim of lien is made, (iii) the amount claimed as of the date of the recording of the notice including late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees, and (iv) the name and address of the Association.

5.9.2 The Assessment Lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration except for (i) tax liens for real property taxes on the Lot, (ii) assessments on any Lot in favor of any municipal or other governmental body and (iii) the lien of any First Mortgage.

5.9.3 Before recording a Notice of Claim of Lien against any Lot the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with late charges, interest, reasonable collection costs and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If the delinquency is not paid within 10 days after delivery of the demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees have been paid in full, regardless of whether all such amounts are set forth in the Notice of Claim of Lien.

5.9.4 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with late charges, interest, lien recording fees, reasonable collection costs, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

5.10 Subordination of the Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. The sale or transfer of any Lot shall not affect the Assessment Lien except that the sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure of a First Mortgage or any bona fide, good faith proceeding in lieu thereof, shall extinguish the Assessment Lien as to payments that became due prior to the sale or transfer. No sale or transfer shall relieve the Lot from liability for any Assessments thereafter becoming due or from the lien thereof and no such extinguishment of the Assessment Lien for any past amounts shall relieve the person who owned the Lot when the sums became due from personal liability for them.

5.11 Exemption of Owner. No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts that he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.

5.12 Maintenance of Reserve Fund. Out of the annual Assessments and other income, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of Improvements to the Common Area.

5.13 No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of the Project Documents, and no offsets against any such Assessments or other amounts shall be permitted for any reason, including, but not limited to, a claim that the Association or Declarant is not properly exercising its duties and powers.

5.14 Transfer, Refinance and Disclosure Fees. Each Purchaser of a Lot shall pay to the Association or its agent (as directed by the Board) immediately upon becoming the Owner of the Lot a transfer fee in such amount as established from time to time by the Board. Any Owner of a Lot who sells or refinances his or her Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association or its agent (as directed by the Board) a refinance or disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant to this Section 5.14 shall not be subject to the maximum annual Assessment pursuant to Section 5.3.8 but are secured by the lien created by Section 5.1.

5.15 Reserve Account Funding. In addition to the transfer fee described in Section 5.14, the first purchaser of a Lot following construction of a Residential Unit on such Lot shall pay to the Association at the time of the purchase an amount equal to one-sixth (1/6) of the annual Assessment attributable to such purchaser's Lot. All amounts paid pursuant to this Section shall be paid by the Association into a reserve account to fund future major repairs and replacements. Declarant and the Association may take such payments into account when determining the amounts to be funded to reserves from other Association funds. Nothing in this Section shall be construed as prohibiting or mandating the Association making additional payments into reserve accounts from other Association funds. Payments made pursuant to this Section do not apply toward payment of annual Assessments and constitute a separate obligation.

5.16 Declarant Audit Right. Following the termination of the Class B membership and so long as Declarant owns any Lot, Declarant shall have the right to audit the books and records of the Association.

ARTICLE 6

USE RESTRICTIONS

6.1 Residential Use: Except as otherwise provided herein, all Lots shall be improved and used only for Single Family Residential Use. No gainful occupation, profession, trade or other commercial activity shall be conducted on any Lot; provided, however, Declarant may use the Lots for such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale of Residential Units, including, but not limited to, a business office, storage areas, construction yards, signs, a model site or sites, and a display and sales office. Notwithstanding the foregoing, home businesses are permitted on the Lots provided they comply with the requirements of this Section.

6.1.1 Those business activities permitted by the preceding limitations shall include only those where:

(a) The existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Residential Unit

(b) The business activity conforms to all applicable zoning ordinances and other applicable governmental requirements;

(c) The business activity does not involve persons coming on the Lot or the door-to-door solicitation of Owners or Occupants in the Property; and

(d) The business activity is consistent with the residential character of the Property and does not constitute a nuisance or hazardous or offensive use or threaten security or safety of any portion of the Property or other Owners.

Compliance with the requirements of this Section 6.1.1 shall be determined by the Architectural Committee in its sole and absolute discretion.

6.1.2 The terms "trade" or "business" as used in this Section 6.1 shall be construed to have the ordinary, generally accepted meanings and shall include, but not be limited to, any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to persons, for which the provider receives a fee, compensation, or other form of consideration, regardless of any of the following:

(a) The activity is engaged in full or part time;

(b) The activity is intended or does generate a profit; or

(c) A license is required for the activity.

6.1.3 Nothing in this Section 6.1 shall be deemed to prevent the leasing of any Lot with the Residential Unit on it to a Single Family from time to time by the Owner of the Lot, subject to the applicable provisions of the Project Documents. Any lease for a Lot must (a) be in writing, (b) be for an entire Residential Unit and Lot, and (c) have a minimum term of at least 30 days. A copy of each lease agreement for a Lot must be provided to the Association. Any lease agreement for a Lot must clearly obligate the tenant to comply with the requirements of the Project Documents. This Section shall not apply to model homes, offices, sales offices, or construction trailers.

6.2 Building Type and Size: No building shall be constructed or permitted to remain on any Lot, other than one detached Residential Unit, without the prior written approval of the Architectural Committee. Unless otherwise approved in writing by the Architectural Committee, all buildings shall be of new construction and no prefabricated structure shall be placed upon any Lot if Visible from Neighboring Property. Storage structures and/or a sales office may be maintained upon any Lot or Lots by Declarant or a building contractor for the purpose of erecting and selling dwellings on the Property or for the purpose of constructing Improvements on the Common Area, but such temporary structures shall be removed upon completion of construction or selling of a dwelling or the Common Area, whichever is later. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used on any Lot at any time as a Residential Unit, either temporarily or permanently. Declarant

and contractors for Declarant shall have the right to place temporary construction trailers and store materials on the Common Area for the purpose of constructing Improvements on the Common Area.

6.3 Signs: No signs shall be displayed on any Lot except the following:

6.3.1 signs used by Declarant to advertise the Lot and Residential Unit thereon for sale or lease;

6.3.2 one temporary "for sale" or "for rent" sign with a total face area of 5 square feet or less (and otherwise meeting such standards as the Architectural Committee may reasonably impose); provided, however, that:

(a) a "for sale" sign shall not be displayed on a Lot until one (1) year after the Lot is conveyed by Declarant or a Builder to a Purchaser; and

(b) a "for rent" sign shall not be displayed on a Lot until two (2) years after the Lot is conveyed by Declarant or a Builder to a Purchaser;

6.3.3 such signs as may be required by law or the prohibition of which is unlawful;

6.3.4 one residential identification sign not exceeding 9 inches by 30 inches;

6.3.5 signs approved by the Architectural Committee; and

6.3.6 one political sign (as defined in A.R.S. §33-1808) with maximum dimensions of 24 inches by 24 inches (or such greater number and/or greater size of political signs permitted by municipal ordinances if the municipality regulates the size and number of political signs on residential property) may be placed on a Lot by the Owner of that Lot; provided, however, that no political signs may be displayed earlier than 45 days before an election day or more than 7 days after an election day.

All signs must conform to applicable municipal ordinances. The restrictions of this Section shall not apply to signs used by (or at the direction of) the Association in the furtherance of its functions.

6.4 Noxious and Offensive Activity: No activity that the Board reasonably deems to be noxious or offensive shall be allowed on the Lots nor shall anything be done thereon that may be, or may become, an unreasonable annoyance or nuisance to the neighborhood, or that shall in any material way interfere with the quiet enjoyment of each of the Owners and tenants of their respective Lots and Residential Units. Without limiting the generality of the foregoing, no rubbish or debris shall be placed or permitted to accumulate on any Lot, no unreasonably offensive odors or loud noises shall be permitted to arise or emit from any Lot, and no speakers, horns, whistles, bells, sirens or other sound devices, except security devices used exclusively for security purposes, shall be located or used on a Lot. In no event shall any Lot or activity thereon be permitted to be unsanitary, unsightly, unreasonably offensive, or otherwise unreasonably detrimental to any other Lot or the Common Area. Normal construction activities shall not be

construed as a violation of this Section but Lots shall be kept reasonably neat and tidy during any period of construction. Supplies or building materials and construction equipment shall be stored only in such areas and in such manner as may be approved by the Architectural Committee or Declarant.

6.5 Motor Vehicles:

6.5.1 Unless otherwise required by law, no motor vehicle with a manufacturer's rating in excess of 1 ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat trailer or other similar equipment or other motor vehicle of any kind shall be parked, kept or maintained on any Lot, street, or Common Area so as to be Visible from Neighboring Property except for (i) trucks with a manufacturer's rating of not more than 1 ton capacity (with or without camper shells), provided that the height of the truck and camper shell does not exceed 7 feet, and (ii) mini motor homes or other recreation vehicles that do not exceed 7 feet in height or 18 feet in length; provided that any vehicle covered by (i) or (ii) is used on a regular and recurring basis for basic transportation.

6.5.2 Except for emergency vehicle repairs, no automobile, motorcycle, motorbike, motorized hang glider, or other motor vehicle of any kind shall be constructed, reconstructed or repaired on any Lot, street or the Common Area so as to be Visible from Neighboring Property. No inoperable vehicle or vehicle deemed unsightly or detracting from the appearance of the Project, in the sole opinion of the Architectural Committee because of missing fenders, bumpers, hoods or other parts or because of lack of proper maintenance, shall be stored, parked or kept on any Lot (so as to be Visible from Neighboring Property) or the Common Area.

6.6 Parking: It is the intent of Declarant to eliminate on-street parking as much as reasonably possible. Unless otherwise required by law, all vehicles of Owners and of their lessees, employees, guests and invitees shall be kept in garages, carports, and residential driveways of the Owners (or such other portions of the Property, if any, as may be designated by the Association) wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot. However, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking is otherwise prohibited by this Declaration or the parking of any inoperable vehicle. No vehicle that is Visible from Neighboring Property may be parked on gravel, grass, landscaped or other non-concrete portions of a Lot, or within 5 feet of any side boundary of a Lot. Limited, short-term parking on streets will be permitted (subject to such rules as the Association may adopt) solely for the following purposes: (i) loading and unloading of non-commercial items for use on the Lot; (ii) temporary visits by guests or invitees of an Owner that do not include overnight parking; and (iii) temporary parking of the Owner's vehicles for special events that do not involve overnight parking and do not occur on a frequent or repetitive basis. Until such time (if ever) as Rustling Oaks Lane and 27th Place are extended northwest of the Property, no street parking will be allowed in front of Lots 179, 180 and 181 of Desert Peak Unit 3 and Lots 4, 5, 6 and 7 of Desert Peak Unit 4 on solid waste collection days (as designated by the City of Phoenix) in order to allow City of Phoenix solid waste trucks to provide service to those Lots.

6.7 Towing of Vehicles: The Association shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational

vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle that is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment towed is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and his Lot and be payable on demand, and the cost shall be secured by the Assessment Lien.

6.8 Machinery and Equipment: No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use or maintenance of Improvements constructed by Declarant or approved by the Architectural Committee, and as may be required or appropriate for performance of the rights or responsibilities of Declarant or the Association.

6.9 Miscellaneous Structures: Slides, playground equipment, basketball poles and hoops, outdoor decks, gazebos and other such miscellaneous structures will be allowed so long as they are approved by the Architectural Committee. Without limiting the approval rights of the Architectural Committee, any basketball pole and hoop must be located a minimum of 20 feet from all side and rear property lines of the Lot.

6.10 Restrictions on Further Subdivision: No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner other than the Declarant, and no portion less than all or an undivided interest in all of any Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written consent of the Board. No Lot may be converted into a condominium, cooperative, fractional interest or other similar legal structure without the prior written consent of the Board. No further covenants, conditions, restrictions or easements shall be recorded by any Owner other than Declarant against any Lot without prior written approval by the Architectural Committee. No application for rezoning, zoning variance, or use permit shall be valid without the prior written consent of the Board included in it, and then only if it does not materially conflict with the Covenants set forth herein.

6.11 Windows: No reflective materials, including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows.

6.12 HVAC and Solar Panels: Except as initially installed by the Declarant, no heating, air conditioning, evaporative cooling or solar energy collecting unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee.

6.13 Garages and Driveways: Garages shall be used only for the parking of vehicles and the storage of supplies and materials and shall not be used for or converted to living quarters or recreational activities after the initial construction thereof without the prior written approval of the Architectural Committee.

6.14 Installation of Landscaping:

6.14.1 Within 6 months after becoming the Owner of a Lot, the Owner shall install landscaping and irrigation Improvements in compliance with the xeriscape principles and other applicable requirements set forth in the applicable municipal zoning ordinances in that portion of his Lot that is between the street(s) adjacent to his Lot and the exterior wall of his Residential Unit or any wall separating the side or back yard of the Lot from the front yard of the Lot. The landscaping and irrigation Improvements shall be installed in accordance with plans approved in writing by the Architectural Committee. Prior to installation of any such landscaping, the Owner shall maintain the front yard of his Lot in a weed-free condition. Once installed, lawns must be neatly mowed and trimmed, bushes must be neatly trimmed, and dead plants, trees, grass and other landscape material must be removed and replaced. Lots must be maintained in a reasonably neat and weed free condition at all times following initial conveyance of the Lot to a Purchaser. All landscaping and irrigation Improvements shall maintain the grade and drainage established on the Lot by Declarant or a Builder and shall not block drainage from the back and side yards through the fence drain blocks and/or gate. All plant materials and irrigation Improvements shall be placed a minimum of 24 inches away from the Residential Unit. Owners shall not install any type of plastic ground cover within 36 inches of a Residential Unit.

6.14.2 If any Owner fails to landscape the front yard of his Lot within the time provided for in this Section, the Association shall have the right, but not the obligation, to enter upon the Owner's Lot to install such landscaping Improvements as the Association deems appropriate, and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

6.14.3 This Section 6.14 shall not apply to Declarant or any Purchaser with respect to any Lot or any other property that has not been conveyed to an Owner with a Residential Unit already constructed thereon.

6.15 Leasing Restrictions: Any lease or rental agreement must be in writing and shall be subject to this Declaration. All leases must be for an entire Residential Unit and Lot and must have a minimum term of 30 days. This Section shall not apply to model homes, offices, sales offices, or construction trailers.

6.16 Animals: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure thereon except that dogs, cats or other common household or yard pets may be kept on or within the Lots, nor may any permitted animal type be kept, bred or maintained for any commercial purpose, or in unreasonable numbers as determined by the Architectural Committee. Notwithstanding the foregoing, no animals or fowl may be kept on any Lot in such a manner that results in a nuisance to, that is an unreasonable annoyance to, or that are obnoxious to other Owners or tenants in the vicinity. All pets must be kept within a fenced yard or on a leash under the control of the Owner at all times. No structure for the care, housing or confinement of any animal or fowl may be located on any Lot so as to be Visible from Neighboring Property.

6.17 Drilling and Mining: No Lot may be used in any manner to explore for or to remove water, oil or other hydrocarbons, or minerals or other earth substances. This Section shall not be construed to prohibit excavation of soil incident to construction of permitted structures.

6.18 Refuse: All refuse, including, but not limited to, all animal wastes, shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Refuse containers shall be kept clean, sanitary and free of noxious odors. Refuse containers shall be maintained so as to not be Visible from Neighboring Property, except to make them available for collection and then only for the shortest time reasonably necessary to effect collection. Refuse containers for Lots 39, 40 and 41 of Desert Peak Unit 4 must be placed on the sidewalk near the intersection of 29th Way and Quiet Hollow Lane on solid waste collection days for emptying until such time (if ever) as 29th Way is extended north of the Property such that solid waste collection trucks may provide direct service to Lots 39, 40 and 41 of Desert Peak Unit 4. No incinerator may be kept or used on any Lot.

6.19 Overhangs: No tree, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any Common Area from ground level to a height of 12 feet without the express approval of the Architectural Committee.

6.20 Clothes Drying: Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any of the Property unless they are within a fenced service yard or otherwise not Visible from Neighboring Property.

6.21 Antennas and Dishes: No antenna, satellite television dish, and other device, including any poles or masts for such devices, for the transmission or reception of television or radio signals or any other form of electromagnetic radiation ("Receivers") may be placed, installed, constructed or maintained upon any Lot ("Receiver Installation"), unless the Receiver Installation complies with the Architectural Committee Rules. The Architectural Committee Rules shall conform with all applicable federal, state or local laws, ordinances or regulations relating to Receivers (including without limitation the provisions of Title 47, Section 1.4000 of the Code of Federal Regulations), as may be amended or modified from time to time ("Receiver Laws").

6.21.1 Notwithstanding any contrary provision herein, no Receiver Installation for any Receiver that is not subject to the Receiver Laws (including without limitation a Receiver having a mast in excess of the size permitted under the Receiver Laws) shall be permitted, unless approved in writing by the Architectural Committee, with such screening and fencing as the Architectural Committee may require.

6.21.2 The Architectural Committee Rules shall provide, among other things, that a Receiver that is subject to the Receiver Laws shall be placed so as not to be Visible from Neighboring Property if such placement will not (A) unreasonably delay or prevent installation, maintenance or use of the Receiver, (B) unreasonably increase the cost of installation, maintenance or use of the Receiver, or (C) preclude the reception of an acceptable quality signal.

6.21.3 Guidance should be sought from the Architectural Committee prior to the placement and installation of a Receiver when an Owner or Occupant is uncertain whether he, she or it is complying with these provisions.

6.22 Utility Services: Subject to any applicable limitations imposed by law from time to time, all lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee. Temporary power or telephone structures incident to construction activities approved by the Architectural Committee are permitted.

6.23 Diseases and Insects: No Owner or Occupant shall permit any thing or condition to exist upon the Property that will induce, breed or harbor infectious plant diseases or noxious insects.

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

6.25 Insurance; Violation of Law. No Owner shall permit anything to be done or kept in or upon his or her Lot or in or upon any Common Area that would result in the cancellation, increase in premium or reduction in coverage of insurance carried by the Association or that would be in violation of any applicable law or requirement of any governmental authority having jurisdiction over the Property.

6.26 Lights. No spotlights, floodlights or other high-intensity lighting shall be placed or used on any Lot that allows light to be directed or reflect on any other Lot or Common Area unless permitted by the Architectural Committee or Architectural Committee Rules.

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

6.28 Pool Fences. Each Owner of a Lot on which a pool or similar amenity is installed shall comply with all applicable requirements of any governmental authority having jurisdiction over the Property related to pool safety, including without limitation any requirements related to fence height, closing mechanisms, and spacing of bars or other fence elements. Notwithstanding the foregoing, no fence or other improvements shall be erected or placed on any Lot in violation of the Architectural Committee Rules, which shall conform with all applicable laws, ordinances and regulations relating to pool safety.

6.29 Declarant and Builder Exemption: Nothing contained in this Declaration shall apply to or prohibit, or be construed to prevent, Declarant and each Builder (or their respective

duly-authorized agents) from erecting or maintaining model homes, structures, Improvements or signs necessary or convenient to the construction, development, identification, or sale or lease of Lots or other real property within the Project. The Association shall take no action that would interfere with access to or use of model homes. Any actions taken by a Builder pursuant to this Section shall require the prior approval of Declarant, which shall not be unreasonably withheld.

6.30 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Declaration or any Supplemental Declaration if the Board determines in its discretion that (i) either (a) a restriction will create an unreasonable hardship or burden on an Owner or other permitted user of the Property, or (b) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete, and (ii) that the activity or use permitted under the variance will not have any substantial adverse effect on the Owners and is consistent with the high quality of life intended for residents and Owners of the Property.

ARTICLE 7

ARCHITECTURAL CONTROL

7.1 Architectural Committee. The Board shall establish an Architectural Committee consisting of either 3 or 5 regular members, as the Board may determine, and 2 alternate members to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board.

7.1.1 No member of the Architectural Committee shall be required to be a licensed architect or to meet any other particular qualifications. A member of the Architectural Committee may be, but shall not be required to be, a member of the Board or an officer of the Association.

7.1.2 In the event of the absence or disability of any regular member of the Architectural Committee, the remaining regular members (even if less than a quorum) may designate either of the alternate members to act as a substitute for the absent or incapacitated regular member. Any action taken by the Architectural Committee including any alternate member shall be deemed to be action by the properly constituted Committee even though 1 or more of the members are alternate members acting in a temporary capacity.

7.1.3 Members of the Architectural Committee shall serve until they resign, are removed or are replaced.

7.1.4 So long as Class B membership exists, the Board may, if it so elects, perform the duties and exercise the powers of the Architectural Committee without appointing a separate group of individuals to constitute the Architectural Committee. In that event, any reference to the Architectural Committee herein or in any other Project Document shall be construed to mean the Board.

7.1.5 So long as Declarant owns any Lot, Declarant shall have the right to appoint and remove members of the Architectural Committee. At such time as Declarant no

longer owns any Lot, the Board shall have the right to appoint and remove members of the Architectural Committee.

7.2 Meetings and Compensation:

7.2.1 The Architectural Committee shall meet from time to time as necessary, in the Committee's reasonable judgment, to perform its duties in a timely manner. Subject to the provisions of Section 7.1.2, the vote or written approval of a majority of the Architectural Committee regular members, at a meeting or otherwise, shall constitute the act of the Committee unless a higher percentage of approval is expressly required for a particular matter or type of matter by any of the Project Documents.

7.2.2 The Architectural Committee shall keep a written record of the Committee's actions at meetings or otherwise.

7.2.3 Members of the Architectural Committee may be entitled to compensation for their services if the Board so determines.

7.3 Architectural Committee Rules: The Architectural Committee shall adopt, and may, from time to time in its sole discretion, amend and repeal by unanimous vote or written consent, the Architectural Committee Rules. The Architectural Committee Rules shall interpret and implement this Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials, and similar features recommended or required for use within the Property.

7.4 Approval Requirements:

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

7.4.2 No Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

7.4.3 No addition, alteration, repair, change or other work that in any way alters the exterior appearance, including, but not limited to, the exterior color scheme, of any Lot, or the Improvements located thereon, shall be made or done without the prior written approval of the Architectural Committee.

7.4.4 Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement that would alter the exterior appearance of the Improvement, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or replacement of any Improvement that the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications that the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove a request for approval within 45 days

after the request, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval.

7.4.5 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

7.4.6 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who requested the approval shall proceed to perform, construct or make the construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practical and within such time as may be prescribed by the Architectural Committee.

7.4.7 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee, including plans deemed approved by the Architectural Committee's failure to act, must be submitted to and approved in writing by the Architectural Committee. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

7.4.8 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval pursuant to this Section 7.4, which fee shall be payable at the time the request for approval is submitted to the Architectural Committee.

7.4.9 The approval of the Architectural Committee required by this Section shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Project.

7.4.10 The provisions of this Section shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant or any Builder.

7.5 Liability: Neither the Architectural Committee, nor any member thereof, shall be liable to the Association, any Owner, or to any other person on account of (i) the approval or disapproval of any plans, drawings, or specifications, or similar documents, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (iii) the overall development of the Property, or (iv) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that the member acted in good faith, on the basis of the information possessed by the individual at the time of the decision, and without gross negligence or willful misconduct. Without in any way limiting the generality of the foregoing, the Architectural Committee and its members may, but is not required to, consult with or listen to the views of the

Association or any Owner with respect to any proposal submitted to the Architectural Committee for approval.

ARTICLE 8

RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Owners, to resubdivide and replat any Lot or Lots that Declarant then owns.

ARTICLE 9

PARTY WALLS

9.1 General Rules of Law to Apply: Each wall or fence, any part of which is placed on or adjacent to a dividing line between separate Lots shall constitute a "Party Wall". Each adjoining Owner's obligation with respect to party walls shall be determined by these covenants and restrictions and, if not inconsistent, by Arizona law.

9.2 Sharing Repair and Maintenance: Each Owner shall maintain the exterior surface of a party wall facing his Lot. Except as provided in this Article, the cost of reasonable repair shall be shared equally by adjoining Lot Owners.

9.3 Damage by One Owner: If a party wall is damaged or destroyed by the act of one adjoining Owner, or his guests, tenants, licensees, agents or family members (whether or not such act is negligent or otherwise culpable), then that Owner shall immediately rebuild or repair the party wall to its prior condition without cost to the adjoining Owner and shall indemnify the adjoining Owner from any consequential damages, loss or liabilities.

9.4 Other Damage: If a party wall is damaged or destroyed by any cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family members (including ordinary wear and tear and deterioration from lapse of time), then the adjoining Owners shall rebuild or repair the party wall to its prior condition, equally sharing the expense; provided, however, that if a party wall is damaged or destroyed as a result of an accident or circumstances that originate or occur on a particular Lot (whether or not such accident or circumstance is caused by the action or inaction of the Owner of that Lot, or his agents, tenants, licensees, guests or family members), then the Owner of that particular Lot shall be solely responsible for the cost of rebuilding or repairing the party wall and shall immediately repair to the former condition of such party wall .

9.5 Right of Entry: Each Owner shall permit the Owners of adjoining Lots, or their representatives, to enter his Lot for the purpose of installations, alteration, or repairs to a party wall on the Property of such adjoining Owners, provided that other than for emergencies, requests for entry are made in advance and that entry is at a time reasonably convenient to the Owner of the adjoining Lot. An adjoining Owner making entry pursuant to this Section shall not be deemed guilty of trespassing by reason of the entry. Any such entering Owner shall indemnify the adjoining Owner from any consequential damages sustained by reason of such entry.

9.6 Right of Contribution: The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

9.7 Consent of Adjoining Owner: In addition to meeting the requirements of this Declaration and of any applicable building code and similar regulations or ordinances, any Owner proposing to modify, alter, make additions to or rebuild the party wall, shall first obtain the written consent of the adjoining Owner. Surfaces of walls generally accessible or viewable only from an Owner's Lot may be planted against, painted and otherwise used (so long as use does not affect the structural integrity of the wall) as the Owner of the Lot may elect. If any such surfaces are Visible from Neighboring Property, the appearance and use of the wall may not be changed without the prior written consent of the Architectural Committee.

9.8 Walls Adjacent to Streets or Common Area: A wall that is adjacent to streets or Common Area shall be treated as though the wall is a party wall with the street or Common Area constituting a Lot owned by the Association, except that any portion of such wall consisting of decorative metal-work that was originally on such wall (or any replacement thereof) shall be the sole responsibility of the Association (subject to an Owner's liability for repairs that would be the Owner's sole responsibility under Section 9.3 or Section 9.4).

ARTICLE 10

MAINTENANCE BY OWNER

Each Owner shall maintain his Residential Unit and Lot in good repair. The yards and landscaping on all improved Lots shall be neatly and attractively maintained, and shall be cultivated and planted to the extent required to maintain an appearance in harmony with other improved Lots in the Property. During prolonged absence, an Owner shall arrange for the continued care and upkeep of his Lot. In the event a Lot Owner fails to maintain his Lot and Residential Unit in good condition and repair or in the event an Owner fails to landscape his Lot as required by this Declaration, the Architectural Committee may have the Lot and Residential Unit landscaped, cleaned and repaired and may charge the Lot Owner for the work. Any repainting or redecorating of the exterior surfaces of a Residential Unit that alters the original appearance of the Residential Unit shall require the prior approval of the Architectural Committee.

ARTICLE 11

EASEMENTS

11.1 Owner's Easements of Enjoyment:

11.1.1 Every Owner, and any person residing with the Owner, shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to the Owner's Lot, subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated on the Common Area.

(b) The right of the Association to suspend the voting rights and right to the use of the recreational facilities, if any, located on Common Area by any Owner (a) for any period during which any Assessment against the Owner's Lot remains delinquent; (b) for a period not to exceed 60 days for any other infraction of the Project Documents, and (c) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period.

(c) The right of the Association to dedicate, transfer or encumber all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board. No such dedication, transfer, or encumbering of Common Area shall be effective unless an instrument signed by the Owners representing 2/3 of the votes in each class or membership in the Association agreeing to the dedication or transfer has been recorded. Notwithstanding the foregoing sentence, the Board may, without the approval or consent of the Members, (i) make minor boundary adjustments on the Plat with respect to any Lot or (ii) dedicate or transfer any part of the Common Area that may be required by the Plat or the applicable zoning for the Property or where the transfer or dedication does not have a substantial adverse effect on the Owners. If ingress or egress to any Lot is through the Common Area, any dedication, transfer, or encumbrance of the Common Area shall be subject to the Lot Owner's easement of ingress and egress.

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

11.1.2 If a Lot is leased or rented by the Owner thereof, the Occupants residing on the Lot pursuant to the lease shall have the right to use the Common Area during the term of the lease, and the Owner of the Lot shall have no right to use the Common Area until the termination or expiration of the lease.

11.1.3 The guest and invitees of any Owner or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area provided they are accompanied by the Owner or other person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times. As long as Declarant owns any Lot, Declarant reserves the right to allow its employees to use any recreational facility located on the Common Area in the normal course of such facilities' operations.

11.2 Drainage Easements: There is hereby created a blanket easement for drainage of ground water on, over and across the Common Area and on, over and across each Lot in such locations as drainage channels or structures are located. An Owner shall not at any time hereafter fill, block or obstruct any drainage easements, channels or structures on his Lot and each Owner shall repair and maintain all drainage channels and drainage structures located on his Lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow

within the drainage easements that may impede the flow of water under, over or through the easements. Any drainage area on a Lot shall be maintained by the Owner of the Lot.

11.3 Utility Easements: Except as installed by Declarant or approved by the Architectural Committee, and subject to the provisions of Section 6.21, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, cable and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless it is contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No structure, landscaping or other Improvements shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement that may damage or interfere with the installation and maintenance of utilities. Any such public utility easement area on a Lot, and all Improvements thereon, shall be maintained by the Owner of the Lot unless the utility company or a county, municipality or other public authority maintains the easement area. There is hereby created a blanket easement upon, across, over and under the Property for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems including, but not limited to, water, sewer, gas, telephone, electricity, cable or communication lines and systems, as such utilities are installed in connection with the initial development of each Lot. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Lots and Common Area and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings thereon. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility or sewer lines may be installed or relocated within the Property except as initially created or approved by Declarant without the prior written approval of, in the case of a Common Area, the Association and the Architectural Committee or, in the case of a Lot, the Owner of the Lot and the Architectural Committee. Nothing contained herein shall entitle Declarant or any utility in exercising the rights granted herein to disturb any Residential Unit constructed in accordance with the requirements hereof. Declarant further reserves temporary construction easements for utility lines, maintenance of storage tanks and facilities and access to and from such facilities.

11.4 Declarant's Easements:

11.4.1 Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area while Declarant is selling Lots. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate.

11.4.2 Installation and Maintenance of Utilities. Easements over the Lots are hereby reserved by Declarant, together with the right to grant and transfer them, for the installation and maintenance of electric, telephone, cable communications, water, gas, drainage and sanitary sewer or similar or other lines, pipes or facilities:

- (a) as shown on the recorded Plat;

(b) as may be hereafter required or necessary to service any Lot (provided, however, no utility other than a connection line to a Residential Unit served by the utility shall be installed in any area upon which a Residential Unit has been or may legally be constructed on the Lot).

11.4.3 Additional Easements.

(a) Declarant shall have the right and an easement on and over the Common Area and Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Common Area, Areas of Association Responsibility and any Lots and other property owned by Declarant for construction or renovation related purposes including without limitation the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

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

11.5 Encroachments: Each Lot shall be subject to an easement for any overhangs and encroachments by walls, fences or other structures upon adjacent Lots as constructed by Declarant or a Builder or as reconstructed or repaired in accordance with the original plans and specifications or as a result of the reasonable repair, shifting, settlement or movement of any such structure.

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

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

11.6.2 For inspection, maintenance, repair and replacement of the Common Area and Areas of Association Responsibility accessible only from such Lots;

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

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

11.6.5 For inspection of the Lots (i) in order to verify that the provisions of the Project Documents are being complied with by the Owners and Occupants or (ii) to satisfy the disclosure requirements, if any, of applicable law.

11.7 Grant of Additional Easements. In addition to the other easements granted or established herein, the Association is authorized and empowered to grant permits, licenses,

easements and rights-of-way upon, across or under land owned or controlled by the Association for utility purposes, access or such other purposes as the Association may determine to be reasonably necessary or appropriate to the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from the grant or use of any such rights shall be repaired by the grantee of the rights at its expense.

ARTICLE 12

MAINTENANCE

12.1 Maintenance by the Association: The Association shall be responsible for the maintenance, repair and replacement of the Common Area and any Areas of Association Responsibility and may, without any approval of the Owners being required, do any of the following:

12.1.1 Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that the work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of the area);

12.1.2 Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway and parking area;

12.1.3 Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary or appropriate for the conservation of water and soil and for aesthetic purposes;

12.1.4 Place and maintain upon any such area such signs, markers and lights as the Board may deem necessary or appropriate for the proper identification, use and regulation thereof;

12.1.5 Construct, maintain, repair and replace landscaped areas on any portion of the Common Area and Areas of Association Responsibility;

12.1.6 Maintain any portion of the Common Area and any Areas of Association Responsibility used for drainage and retention;

12.1.7 Pay all real and personal property taxes and assessments;

12.1.8 Pay all utility charges and related costs; and

12.1.9 Do all such other and further acts that the Board deems necessary or appropriate to preserve and protect the Common Area and any Areas of Association Responsibility and the appearance thereof, in accordance with the general purposes specified in this Declaration.

12.2 Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or Area of Association Responsibility or interfere with the activities of the Association in connection therewith. In the event that the need for maintenance

or repair of any Common Area or Area of Association is caused by the willful or negligent act of an Owner, his family, lessee, guests or invitees, any expenses incurred by the Association by reason of any such maintenance or repairs shall be paid by the Owner to the Association, upon demand, and such amounts shall be a lien on any Lots owned by the Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

12.3 Payment of Utility Charges. Subject to the provisions of Section 3.6, each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Common Area shall be a Common Expense of the Association and shall be included in the budget of the Association.

12.4 Maintenance by Governmental Entities. No municipality or other governmental entity is responsible for or will accept maintenance for any private facilities, landscaped areas, or Common Area within the Project.

12.5 Landscaping Replacement. Landscaping originally planted on the Common Area may exceed the landscaping that is ultimately planned for Common Area due to over-planting in anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead or damaged landscaping if, in the reasonable discretion of the Board, (a) the remaining landscaping is acceptable to the Board and (b) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with governmental entities in connection with the Property, even if the location of specific plants is different than the locations shown on such approved landscaping plans.

12.6 Alteration of Maintenance Procedures. Following the termination of the Class B membership and so long as Declarant owns any Lot, the Association shall not, without the written approval of Declarant, alter or fail to follow the maintenance and repair procedures recommended by the Association's management company as of the termination of the Class B membership unless such alteration will provide for a higher level of maintenance and repair. Declarant shall have the right, but not the obligation, to perform any required maintenance or repair not performed by the Association within ten (10) business days following notice from Declarant that such maintenance or repair is required under this Section. If Declarant performs such maintenance or repair, the costs incurred by Declarant shall be reimbursed by the Association within thirty (30) days following written demand therefor accompanied by copies of invoices for such costs. Notwithstanding any contrary provision contained herein, this Section shall not be modified, amended or revoked in any way without the express written consent of Declarant.

12.7 No Duty of Protection or Security. No provision of this Declaration or the other Project Documents shall be construed or interpreted to create a duty of the Declarant, Related Parties, a Builder, the Association, the Board, any officer of the Association or any committee or member of a committee appointed by the Board to protect or further the health, safety, welfare or property of any Owner, Occupant or other person entering upon or making use of any portion of the Property, regardless of whether any monies of the Association are expended for such a purpose.

ARTICLE 13

INSURANCE

13.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

13.1.1 Casualty insurance on the Common Area and the Association's interest in any Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement cost, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than 100% of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a casualty policy;

13.1.2 Commercial general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Any such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and the Association's interest in any Areas of Association Responsibility, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

13.1.3 Worker's compensation and insurance to the extent necessary to meet the requirements of the laws of Arizona and employer's liability coverage;

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

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

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

13.4 Insurance Obtained by Owners. Each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense covering his Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his Lot.

13.5 Payment of Insurance Proceeds. Any loss to the Common Area or Association's interest in any Areas of Association Responsibility, covered by insurance obtained by the Association in accordance with this Article, shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 13.6, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area or Area of Association Responsibility.

13.6 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area or the Association's interest in any Areas of Association Responsibility that is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners owning at least 80% of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire damage is not repaired or replaced, insurance proceeds attributable to the damaged area shall be used to restore the damaged area to a condition that is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot or may be retained by the Association for future expenses, as the Board determines.

ARTICLE 14

TERM AND ENFORCEMENT

14.1 Enforcement. Subject to the provisions of Section 14.4 and of ARTICLE 15, the Association, the Architectural Committee or any Owner shall have the right (but not the obligation) to enforce the Project Documents and any amendment thereto.

14.1.1 During reasonable hours and upon reasonable notice to an Owner or Occupant of a Lot, any member or authorized representative of the Architectural Committee or the Board shall have the right to enter upon and inspect any Lot or Improvements thereon, except for the interior portions of occupied Residential Units, to determine if the Improvements are in compliance with the Project Documents. Any such person shall not be guilty of trespass by reason of such an entry.

14.1.2 Failure by the Association, the Architectural Committee or any Owner to enforce the Project Documents shall in no event be deemed a waiver of the right to do so thereafter.

14.1.3 Deeds of conveyance may contain a reference to this Declaration or other Project Documents, but whether or not reference is made in any deed, the Project Documents shall be binding upon the respective grantees.

14.1.4 Violators of any portion of the Project Documents may be restrained by any court of competent jurisdiction and damages may be awarded against violators, provided, however, that a violation of the Project Documents, or any one or more of them, shall not affect the lien of any first mortgage or first deed of trust.

14.1.5 If the Architectural Committee or Board enforces any provision of the Project Documents, the cost of the enforcement shall be paid by the Association but may be recovered through an Assessment against the offending Owner and the Owner's Lot.

14.2 Term: This Declaration, as amended from time to time, shall run with and bind the land for a term of 30 years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of 10 years for so long as the Lots shall continue to be used for residential purposes unless there is a vote to terminate this Declaration by Owners holding not less than 75% of the votes entitled to be cast, not more than 1 year prior to the date otherwise scheduled for commencement of the next extension term. If the necessary votes are obtained, the Board shall cause to be recorded with the County Recorder of the county in which the Property is located a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

14.3 Amendment:

14.3.1 The Declaration may be amended at any time by (a) an instrument signed by the Owner(s) of at least two thirds of the votes of each class entitled to be cast, or (b) a certification by the President of the Association that the requisite number of Members voted in favor of the amendment at a duly called election.

14.3.2 Notwithstanding any contrary provision contained herein, the Declarant, so long as the Declarant owns any portion of the Property, and thereafter the Board, may amend this Declaration, without obtaining the consent or approval of any other Owner or First Mortgagee, in order to correct drafting mistakes contained herein or to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Department of Veterans Affairs or any federal, state or local governmental agency whose approval of the Project, the Plat or any of the Project Documents is required by law or is requested by the Declarant or the Board.

14.3.3 Any amendment to this Declaration shall be recorded with the County Recorder in the county in which the Property is located and shall take effect immediately upon recordation (or on such later date as may be specified in the amendment) regardless of the status of the then current term of the Declaration under Section 14.2. A properly executed and recorded amendment may alter the restrictions in whole or in part applicable to all or any portion of the Property and need not be uniform in application to the Property.

14.4 Approval of Litigation: Except for any legal proceedings initiated by the Association to (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Association Rules; (iii) enforce the Architectural Committee Rules; (iv) collect any unpaid Assessments levied pursuant to this Declaration, or (v) enforce a contract entered into by the Association with vendors providing services to the Association, the Association shall not incur litigation expenses, including, but not limited to, attorneys' fees and costs or liability for costs and fees of an adverse party, where the Association initiates legal proceedings or is joined as a

plaintiff in legal proceedings, without the prior approval of a Majority of Members, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association that are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by special Assessment and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations. Each Owner shall notify prospective Purchasers of such legal proceedings initiated by the Board and not included in the above exceptions and must provide such prospective Purchasers with a copy of the notice received from the Association in accordance with Section 15.3. Nothing in this Section shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (i) enforce the Project Documents; (ii) comply with the statutes or regulations related to the operation of the Association or the Areas of Association Responsibility; (iii) amend the Project Documents as provided in this Declaration; (iv) grant easements or convey Common Area as provided in this Declaration; or (v) perform the obligations of the Association as provided in this Declaration. Subject to the exceptions in the first sentence of this Section, with respect to matters involving property or Improvements, the Association (or Board of Directors) additionally shall not initiate legal proceedings or join as a plaintiff in legal proceedings unless (1) the property or Improvement is owned either by the Association or jointly by all members of the Association, (2) the Association has the maintenance responsibility for the property or Improvements pursuant to this Declaration, or (3) the Owner who owns the property or Improvements consents in writing to the Association initiating or joining the legal proceeding.

14.5 Annexation of Additional Property: Until the later of (a) 7 years following recordation of this Declaration or (b) termination of the Class B membership, Declarant shall (subject to the provisions of Section 16.4) have the right to annex any Annexable Property. Annexation shall be effective upon recordation by Declarant of a signed and acknowledged Supplemental Declaration stating that the Annexable Property has been annexed to this Declaration. No consent or approval of any such annexation by the Board or Members of the Association shall be necessary for an annexation by Declarant. Upon annexation, the annexed real property shall have the same rights, privileges and obligations as property originally subject to the terms of this Declaration, including membership in the Association, except that such rights, privileges and obligations shall not include matters arising or accruing prior to annexation. Annual Assessments shall be prorated for annexed property through the date of annexation.

14.6 De-Annexation of Property. Subject to Section 16.4, Declarant shall have the right from time to time, in its sole discretion and without the consent of any person (other than consent of the owner of the property being de-annexed), to delete from the Property and remove from the effect of this Declaration one or more portions of the Property, provided, however, that a portion of the Property may not be deleted from this Declaration unless at the time of deletion and removal no Residential Unit or material Common Area Improvements have been constructed thereon (unless the de-annexation is for the purpose of accomplishing minor adjustments to the boundaries of Lots or the Property). No deletion of any portion of the Property shall occur if the deletion would terminate access to any right-of-way or utility line unless reasonable alternative provisions are made for access. No deletion of any portion of the Property shall affect the Assessment Lien on the deleted portion of the Property for Assessments accruing prior to

deletion. Any deletion of a portion of the Property hereunder shall be made by Declarant recording a notice thereof.

ARTICLE 15

CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

It is intended that the Common Area, each Lot, and all Improvements constructed on the Property by persons ("Developers") in the business of constructing Improvements will be constructed in compliance with all applicable building codes and ordinances and that all Improvements will be of a quality that is consistent with the good construction and development practices in the area where the Project is located for production housing similar to that constructed within the Project. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding alleged defects ("Alleged Defects") in any Improvements on any Lot or Common Area will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers (including Declarant), the Association, the Board, and all Owners shall be bound by the following claim resolution procedures. In the event of a conflict between the terms and provisions of this ARTICLE 15 and any agreement entered into by and between a Developer and an Owner, the terms and provisions of such agreement shall prevail.

15.1 Right to Cure Alleged Defect: If a person ("Claimant") claims, contends, or alleges an Alleged Defect, each Developer shall have the right to inspect, repair and/or replace the Alleged Defect as set forth herein.

15.1.1 Notice of Alleged Defect: If a Claimant discovers an Alleged Defect, the Claimant shall give written notice of the Alleged Defect ("Notice of Alleged Defect") within 15 days after discovery to the Developer that constructed the Improvement.

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

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

the Developer and recorded with the County Recorder in the county in which the Property is located.

15.3 Legal Actions: Any legal action initiated by a Claimant must be brought in accordance with, and subject to, Section 14.4 and Section 15.4 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against a Developer alleging (1) damages for costs of repairing an Alleged Defect ("Alleged Defect Costs"), (2) the diminution in value of any real or personal property resulting from an Alleged Defect, or (3) any consequential damages resulting from an Alleged Defect, any judgment or award in connection therewith shall first be used to correct and/or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by the Claimant in correcting and/or repairing the Alleged Defect. If the Association, as a Claimant, recovers any funds from a Developer (or any other person) to repair an Alleged Defect, any excess funds remaining after repair of the Alleged Defect shall be paid into the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer including, at a minimum, (1) a description of the Alleged Defect; (2) a description of the attempts of the Developer to correct the Alleged Defect and the opportunities provided to the Developer to correct the Alleged Defect; (3) 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 résumé of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer and a description of the relationship between the attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between the attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer and the source of the funds that will be used to pay the fees and expenses; (8) the estimated time necessary to conclude the action against the Developer; (9) a good faith estimate of the fees and costs the Association may be required to pay to the Developer in the event that the Association's claim is unsuccessful; and (10) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

15.4 Alternative Dispute Resolution: Any dispute or claim between or among (a) a Developer (or its brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner or the Association on the other hand; or (b) any Owner and another Owner; or (c) the Association and any Owner, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration or the other Project Documents; (ii) the design or construction of any portion of the Project, or (iii) an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this Section 15.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

15.4.1 Negotiation: Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a

representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear its own attorneys' fees and costs in connection with any such negotiation.

15.4.2 Mediation: If the parties cannot resolve their Dispute pursuant to the procedures described in Section 15.4.1 within such time period as may be agreed upon by the parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") shall have 30 days after the Termination of Negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which 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. If the Disputing Party does not submit the Dispute to mediation within 30 days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of the Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to persons who are not a party to the proceedings.

(a) Position Memoranda; Pre-Mediation Conference: Within 10 days after the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within 10 days following submittal of the 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 Maricopa County or such other place as may be mutually acceptable to the parties to the Dispute.

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

(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. Confidential information disclosed to a mediator by the parties to the Dispute, or by witnesses in the course of the mediation, shall be kept confidential. 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 proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless otherwise agreed. Each party to the Dispute shall bear its own attorneys' fees and costs in connection with such mediation.

15.4.3 Final and Binding Arbitration: If the parties cannot resolve their Dispute pursuant to the procedures described in Section 15.4.2, the Disputing Party shall have 30 days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to final and binding arbitration in substantial conformance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as modified or as otherwise provided in this Section 15.4.3; however, the arbitration need not be conducted by or through the AAA. If the Disputing Party does not submit the Dispute to arbitration within 30 days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of the Dispute; provided, nothing herein shall release or discharge any party from any liability to persons who are not a party to the proceedings.

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 Developer shall be required to participate in the arbitration proceeding if all parties against whom the Developer would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 15.4.3, the arbitrator shall have the authority to try all issues, whether of fact or law.

(a) Place: The arbitration proceedings shall be heard in Maricopa County.

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

(c) 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.

STATE OF ARIZONA)
) s.s.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this 20th day of June, 2006
by Brett Hopper, the Vice President of CHI Construction
Company, for and on behalf thereof.

Lisa Casas
Notary Public

My commission expires:

January 29, 2007

