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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DEEP WELL RANCH**

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DEEP WELL RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR DEEP WELL RANCH (the "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by CHAMBERLAIN DEVELOPMENT PRESCOTT, L.L.C., an Arizona limited liability company ("Declarant").

**INTRODUCTION**

A. Declarant is the owner of that certain real property in the Yavapai County, Arizona, commonly known as Deep Well Ranch, as more particularly described on the attached Exhibit A, which real property shall hereinafter be referred to as the "Covered Property".

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

C. Declarant desires to provide for the creation of a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair and replace the Common Area and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Common Area and the enforcement of the covenants, conditions and restrictions contained in this Declaration. The Association also may provide community services benefiting all or a portion of the Covered Property, and implement programs and services to encourage interaction and a sense of community among Owners and Occupants of the Covered Property.

D. In the course of development, Declarant may Record various Declarations of Annexation, Tract Declarations or other instruments that shall cover certain portions of the Covered Property to be specified therein.

E. For the purpose of protecting the value, desirability, attractiveness and character of the Covered Property, Declarant desires and intends that the Covered Property shall be held,

sold and conveyed subject to the provisions hereof, which shall run with all of the Covered Property. This Declaration shall be binding on all parties having any right, title or interest in the Covered Property, or any part thereof, and shall inure to the benefit of such parties and their successors and assigns.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

## ARTICLE 1

### DEFINITIONS

As used in this Declaration, the following terms shall have following meanings:

**1.1     “Acre”** means an area of 43,560 square feet of land, with the acreage of any Parcel being rounded to the nearest full acre in size.

**1.2     “Administrative Fee”** means the fee levied by the Board upon transfers as set forth in Section 8.12.3 of this Declaration.

**1.3     “Agency”** means any of the Federal Housing Administration (“FHA”), Veterans Administration (“VA”), Federal National Mortgage Association (“FNMA”), Federal Home Loan Mortgage Corporation (“FHLMC”), and any other governmental agency or financial institution insuring or guaranteeing residential loans, or purchasing such loans on the secondary market.

**1.4     “Alleged Defect”** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the of the Common Area or any Lot, or the buildings, Residences and other structures or improvements located thereon, by a Declarant Party including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.

**1.5     “Annexable Property”** means the real property included within the Master Plan.

**1.6     “Applicable Law”** means any applicable federal, state or local law, rule, regulation or ordinance, order or requirement now or hereafter in effect.

**1.7     “Articles”** means the Articles of Incorporation of the Association, as amended or restated from time to time.

**1.8     “A.R.S.”** means Arizona Revised Statutes. Any reference to a specific statute shall refer to the statute as the same may be amended from time to time and shall include any successor statute.

**1.9     “Assessment Lien”** means the charge and continuing servitude and lien against a Lot or Parcel for payment of Assessments, late charges for delinquent or late payment of Assessments (to the extent permitted by Applicable Law), and reasonable attorneys’ fees as further described in Section 8.1 of this Declaration.

**1.10 "Assessment Period"** means each period for which Assessments are to be levied against a Lot or Parcel pursuant to this Declaration, as more particularly described in Section 8.3 of this Declaration.

**1.11 "Assessments"** means all Regular Assessments, Benefited Assessments, Special Assessments, Working Capital Fund Assessments, Reserve Fund Assessments, and shall include any charges or fines hereunder that are stated to be secured by the Assessment Lien.

**1.12 "Association"** means the Deep Well Ranch Property Owners Association, an Arizona nonprofit corporation, and its successors and assigns.

**1.13 "Association Rules"** means the rules and regulations adopted by the Board pursuant to Section 6.3 of this Declaration.

**1.14 "Benefited Assessments"** means the Assessments, if any, levied by the Board pursuant to Section 8.8 of this Declaration.

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

**1.16 "Bylaws"** means the Bylaws of the Association, as amended or restated from time to time. The Bylaws contain the operational procedures of the Association.

**1.17 "City"** means the City of Prescott, Arizona.

**1.18 "Common Area"** means all real property and the Improvements or amenities thereon, all easements and licenses, and all personal property and facilities, that shall from time to time be owned, controlled or operated by the Association within the Covered Property (or by Declarant, if Declarant is committed to convey such real property and Improvements or amenities to the Association), including, but not limited to, areas used for landscaping (including, but not limited to landscape tracts adjacent to public and private rights-of-way as designated on maps of dedication or otherwise), flood control, drainage, bicycle or jogging paths, passive recreational areas, open space, walkways, and pedestrian and vehicular ingress and egress, or with respect to which the Association has undertaken administrative, maintenance or other similar responsibilities. Common Area does not include any "Common Areas," "Areas of Association Responsibility," or similar areas owned, controlled, or operated by a Neighborhood Association and administered under a Tract Declaration unless the Association has undertaken perpetual administrative, maintenance, or similar responsibilities for such areas pursuant to a Recorded instrument.

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

**1.20 "Community-Wide Standard"** means the standard of conduct, maintenance, or other activity required within the Covered Property. Such standard may contain both objective and subjective elements. Until the expiration of Declarant Control Period, Declarant shall have the sole authority to establish the subjective elements of the Community-Wide Standard. The

objective elements of the Community-Wide Standard shall be determined by the Board. The Community-Wide Standard may evolve as development progresses and as the needs and demands of the Project. After the expiration of Declarant Control Period, the Community-Wide Standard shall be the standard of conduct, maintenance, or other activity generally prevailing throughout the Covered Property at the subject point in time, as determined exclusively by the Board.

**1.21 “County”** means Yavapai County, Arizona.

**1.22 “Covered Property”** means the real property more particularly described in Exhibit A and all portions of the Annexable Property annexed into the Association and subjected to this Declaration.

**1.23 “Declarant”** means (1) Chamberlain Development Prescott, L.L.C., an Arizona limited liability company, and (2) an Owner designated by James Trust (if James Trust designates such Owner to become a Declarant under Section 2.4.2), and their respective successors and any person or entity to whom they expressly and exclusively assign all (but not less than all) of their rights as Declarant (or to become Declarant) under this Declaration by a Recorded instrument. At no time may there be more than two (2) Declarants under this Declaration. At any time when there is more than one Declarant, (a) all rights, exemptions, and privileges granted to Declarant that do not require affirmative action for exercise shall be available to each Declarant, (b) all rights (including, without limitation, approval rights), exemptions, and privileges granted to Declarant that may be exercised as to a specific portion of the Covered Property may be exercised only by the Declarant (without the consent of the other Declarant) that either owns such portion of the Covered Property or that originally annexed such portion of the Covered Property into this Declaration, including, without limitation, Recording a Tract Declaration against such portion of the Covered Property, and (c) the following rights and privileges of Declarant shall require the unanimous consent of all Declarants and/or their respective successors or assigns: (i) annexation of real property other than the Annexable Property into the Declaration, (ii) withdrawal of property from the Declaration, (iii) changes or modifications to the Development Plan, (iv) grant, assignment, and reservation of any easements, rights-of-way and licenses over any Common Areas, (v) subject to the immediately following sentence, appointment and removal of the members of the Board, (vi) approval of any encumbrance or conveyance of Common Area, (vii) approval of the termination of the Declaration, (viii) approval of an amendment to the Declaration, and (ix) any other actions that require the vote or approval of Declarant under the terms of the Governing Documents. As to the appointment and removal of the members of the Board set forth in subsection (v), each Declarant shall have the right to appoint one member, and the remaining members shall be voted upon according to each Declarant’s share of the votes in the Association.

**1.24 “Declarant Affiliate”** means any Person owning any portion of the Covered Property or Annexable Property that is directly or indirectly controlling, controlled by or under common control with Declarant or, if either the Declarant or Person is a trust, the beneficiary of Declarant or such Person, and shall include without limitation, any general or limited partnership, limited liability company, corporation or trust in which Declarant or the beneficiary of Declarant (or another Declarant Affiliate) is a general partner, managing member, controlling

shareholder, or beneficiary, and any officers, directors, shareholders, partners, members, managers, trustees or beneficiaries of Declarant or the beneficiary of Declarant.

**1.25 “Declarant Control Period”** means the period commencing upon the Recording of this Declaration and ending on the earlier of (a) the date that neither Declarant nor any Declarant affiliate owns or has an option to purchase any Lot subject to this Declaration, as may be amended from time to time, including but not limited to a Declaration of Annexation, or (b) the date specified in a written notice from Declarant to the Board as the date that Declarant Control Period will terminate. Even if previously expired, Declarant Control Period, shall revive if, because of subsequent annexations or other events, Declarant or any Declarant Affiliate owns any land within the Covered Property.

**1.26 “Declarant Party”** means: (1) Declarant and its members, managers, officers and employees; (2) the entity which platted the Project if different from but affiliated with Declarant; (3) any general contractor, subcontractor, material supplier, laborer, architect, engineer, consultant or other Person who furnished or provided any labor, materials or services in connection with the construction of any Common Area improvements in the Covered Property and their respective members, managers, officers and employees; or (4) any employee or other representative of Declarant who serves as a director or officer of the Association

**1.27 “Declaration”** means the covenants, conditions, restrictions and easements herein set forth in this entire document, as such Declaration may be amended or restated from time to time.

**1.28 “Declaration of Annexation”** means a declaration executed by a Declarant (and the owner, if the owner is not then Declarant) and declaring that any portion of the Annexable Property is made subject to this Declaration and made a portion of the Covered Property.

**1.29 “Delinquent Amount”** means any Assessment, late charge, or installment thereof, or any other sum due hereunder and not paid when due.

**1.30 “Developer Owner”** means a Person in the business of developing, leasing and/or selling real property (including homebuilders), who (i) has acquired ten or more Lots or one or more Parcels within the Covered Property or Annexable Property in connection with, and in the course of, such business, for the purpose of developing, leasing or selling Lots or Parcels; and (ii) has been designated a Developer Owner in an instrument Recorded by Declarant in the Office of the County Recorder of Yavapai County, Arizona. A Developer Owner shall include a land trust, land banker, optionor or a similar entity or nominee buying, developing, owning or selling land for ultimate construction of Residences or buildings thereon. For the avoidance of doubt, Developer Owner shall include any Declarant Affiliate who owns land for sale to homebuilders.

**1.31 “Developer Owner Parties”** means each Developer Owner and (1) its members, managers, officers and employees; (2) any general contractor, subcontractor, material supplier, laborer, architect, engineer, consultant or other Person who furnished or provided any labor, materials or services in connection with the construction of any Residences and their respective

members, managers, officers and employees; or (3) any employee or other representative of a Developer Owner who serves as a director or officer of the Association.

**1.32 “Development Plan”** means any plan maintained in the offices of the Association depicting the plan for future development of portions of the Covered Property and Annexable Property. The Development Plan, or any portion thereof, may from time to time be amended at the sole and absolute discretion of Declarant as to any Covered Property or Annexable Property owned by Declarant or in the sole and absolute discretion of any Developer Owner (with the prior written approval of Declarant) as to Covered Property owned by such Developer Owner, including to conform to amendments to the zoning for the property covered thereby.

**1.33 “Dominant Lot”** means a Lot as described in Section 3.11.

**1.34 “Eligible Mortgage Holder”** means a First Mortgagee who has in writing requested notice of material amendments pursuant to Section 14.3 hereof.

**1.35 “Event of Foreclosure”** means the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee’s deed at a trustee’s sale in regard to a mortgage, deed of trust or other encumbrance inferior in priority to an Assessment Lien.

**1.36 “Exempt Property”** means portions of the Covered Property not subject to Assessments, and with respect to which no voting rights exist, that shall be the following areas now or hereafter located within the Covered Property, unless such property is made subject to assessment in a Tract Declaration.

- (a) All Government Property;
- (b) All Common Area for so long as Declarant or the Association is the owner thereof; and
- (c) All property owned and maintained by a Neighborhood Association (or by the members of a Neighborhood Association as tenants-in-common) exclusively for the common use and enjoyment of its members.

**1.37 “Exempt Transfer”** means any transfer:

- (a) by or to Declarant in the course of or pursuant to development or bulk resale (but not transfers to a Purchaser);
- (b) by or to a Developer Owner in the course of or pursuant to development or bulk resale (but not transfers to a Purchaser);
- (c) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;
- (d) to the Owner’s estate, surviving spouse, or heirs at law upon the death of the Owner;

(e) to an entity wholly owned by the Owner or to a family trust created by the Owner for the direct benefit of the Owner and his or her spouse and/or heirs at law; provided, any subsequent transfer of an ownership interest in such entity shall not be an Exempt Transfer;

(f) to a corporation, limited liability company, partnership or other entity in which the Owner owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Fund Assessment or the Reserve Fund Assessment;

(g) to an institutional lender as security for the performance of an obligation pursuant to an Event of Foreclosure; or

(h) to the Association pursuant to an Event of Foreclosure.

**1.38 “First Mortgage”** means any bona fide mortgage or deed of trust on any Lot or Parcel, or portion thereof, with the first priority over any other mortgage or deed of trust encumbering such Lot or Parcel, or portion thereof.

**1.39 “First Mortgagee”** means the holder of any First Mortgage.

**1.40 “Governing Documents”** means this Declaration, the Articles of Incorporation and Bylaws of the Association, and the Association Rules, as the same may from time to time be amended or restated.

**1.41 “Government Property”** means all land and Improvements owned by or dedicated to a public or governmental agency, authority, or utility for so long as the public or governmental agency, authority, or utility is the owner or beneficiary thereof, except for land or Improvements, or both, owned and/or operated by a public or governmental agency, authority, utility acting in a proprietary capacity.

**1.42 “Improvement”** means any structure or other improvement, including any Residence or modification thereof, any patio, outbuilding, pool, wall, path, driveway, excavation, landscaping, fixture, antennae, satellite system, fence, awning, sunshade, flagpole, or other structure or improvement or appurtenance, and including decorative or aesthetic changes, such as color changes or changes to materials.

**1.43 “James Trust”** means James Deep Well Ranches #1, LLC, an Arizona limited liability company, and its successors and any person or entity to whom its expressly and exclusively assigns all (but not less than all) of its rights under this Declaration by a Recorded instrument.

**1.44 “Land Use Classification”** means a classification of a portion of the Covered Property, as set forth herein or in a Tract Declaration, restricting development to the applicable classification(s) as may be required by the Master Plan.

**1.45 “Lot”** means an area of real property within the Covered Property designated as a “Lot” on any Recorded subdivision plat.

**1.46 "Master Plan"** means that certain Deep Well Ranch Master Plan dated November 15, 2017, and approved by the City of Prescott City Council on November 28, 2017, as may be amended from time to time.

**1.47 "Master Plan Administration Agreement"** means that certain Master Plan Administration Agreement dated and Recorded concurrently herewith, between Declarant, James Trust, DW 1 Investments, LLC, an Arizona limited liability company, and Deep Well Ranch MPA, Inc., an Arizona nonprofit corporation.

**1.48 "Master Plan Administrator"** means Deep Well Ranch MPA, Inc., an Arizona nonprofit corporation, and its successors and assigns.

**1.49 "Member"** shall mean Person who is a member of the Association under Article VII.

**1.50 "Membership"** means the rights and duties of Owners, including Declarant so long as Declarant is a Class A or Class B Member, with respect to the Association.

**1.51 "Neighborhood"** means any residential area within the Covered Property that is designated as a Neighborhood, whether or not governed by a Neighborhood Association, as more particularly described in Section 6.7. By way of illustration and not limitation, a townhome development, cluster home development, or single-family detached housing development might each be designated as a separate Neighborhood, or may be combined as one Neighborhood. A Neighborhood may be comprised of more than one housing type. In addition, a parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

**1.52 "Neighborhood Association"** means a property owners association having jurisdiction over a specific Neighborhood concurrent with, but subordinate to, the Association.

**1.53 "Occupant"** means any Person, other than an Owner, occupying a Lot, or any portion thereof or building or structure thereon, as tenant, family member, licensee or otherwise, other than on a merely transient basis.

**1.54 "Owner"** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or an Occupant. The record owner of fee title to a Lot subject to an option to purchase shall be the Owner of the Lot until the option is exercised and fee title to the Lot is conveyed to the optionee. Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741, *et. seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of a Lot subject to a deed of trust pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the Owner. In the case of a Lot the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property

shall be deemed to be the Owner. In the case of a Lot where fee simple title is vested in a party (a **“Land Banker”**) that has entered into a lending option or sale agreement pursuant to which Declarant or a Developer Owner has the option or other right to purchase the Lot from such Land Banker, Declarant or the Developer Owner holding the option or other purchase right shall be deemed to be the Owner.

**1.55 “Parcel”** means any parcel of land within the Covered Property, other than Common Area owned in fee by the Association, and including any portion, pad, or subparcel thereof, if such portion, pad, or subparcel shall have been created by a parcel split or subdivision approved or permitted in accordance with this Declaration. Lots shall not be included in the definition of a Parcel and any Parcel shall cease being a Parcel upon Recording of a subdivision Plat creating Lots in regard thereto. In the case of the staged development of a Parcel, those areas of such Parcel not yet covered by a Recorded Plat creating Lots shall continue to be a Parcel for purposes of this Declaration.

**1.56 “Person”** means a natural person, a corporation, a limited liability company, a partnership, a trustee, or any other legal entity.

**1.57 “Plat”** means any plat or survey affecting the Covered Property filed in the office of the Recorder for Yavapai County, Arizona, as such plats or surveys may be amended from time to time.

**1.58 “Project”** means the planned community known as Deep Well Ranch to be developed on the Covered Property and any portions of the Annexable Property annexed pursuant to this Declaration.

**1.59 “Purchaser”** means any Person, other than Declarant or a Developer Owner, who becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to Declarant or a Developer Owner for use as a model home in connection with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot, is assigned any or all of Declarant’s rights or a Developer Owner’s rights under this Declaration.

**1.60 “Record”, “Recording”, and “Recorded”** means placing or having placed a document of public record in the Official Records of Yavapai County, Arizona.

**1.61 “Regular Assessments”** means the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.

**1.62 “Reserve Fund Assessment”** provided for in Section 8.12.2 means an amount to be established by the Board from time to time, but no more than twenty-five percent (25%) of the then-current annual Regular Assessment (plus 25% of any applicable Benefited Assessment).

**1.63 “Residence”** means any building or portion of a building situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

**1.64 “Shortfall”** is as defined in Section 8.6.1 of this Declaration.

**1.65 “Single Family”** means a group of persons related by blood, marriage or legal adoption, or a group of not more than three unrelated persons maintaining a common household. “Single Family” use shall not include any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to Occupants, except that this exclusion shall not apply to group homes or similar living or care arrangements that by Applicable Law may not be prohibited by enforcement of private restrictive covenants.

**1.66 “Single Family Parcel”** means a Parcel designated in a Tract Declaration as having a Single Family Residential Use.

**1.67 “Single Family Residential Use”** means Single Family detached residential use.

**1.68 “Special Assessments”** means the assessments, if any, levied by the Board pursuant to Section 8.7 of this Declaration.

**1.69 “Special Use Fees”** means any fees charged by the Association for use of the Common Area pursuant to Section 3.1.2 of this Declaration. Special Use Fees that are charged annually and billed by invoice may be treated the same as Assessments for all purposes hereof.

**1.70 “Tract Declaration”** means any declaration of covenants, conditions and restrictions or like declaration Recorded after the Recording of this Declaration and pertaining to any portion of the Covered Property, that shall in all cases be consistent with and subordinate to this Declaration. Tract Declarations may establish a Neighborhood and the Land Use Classification of Covered Property and, unless the context otherwise indicates, the term Tract Declaration may include any Declaration of Annexation establishing additional covenants.

**1.71 “Use Restrictions”** means the use restrictions attached as Exhibit B, as they may be modified, canceled, limited, or expanded under Article V.

**1.72 “Visible From Neighboring Property”** means, with respect to any given object, that such object would be visible to an individual whose eyes are 6 feet above the ground and who is standing at ground level on any part of any Lot, the Common Area, or any public street located on or adjacent to the Project, when viewed from substantially the same elevation as the given object. The Board shall have the right to determine the meaning of the term “Visible From Neighboring Property” as applied on a case by case basis, and the determination of the Board shall be binding in that regard.

**1.73 “Voting Member”** means each Class A Member and the Class B Member.

**1.74 “Working Capital Fund Assessment”** pursuant to Section 8.12.1 means an amount to be established by the Board from time to time, but no more than twenty-five percent (25%) of the then-current annual Regular Assessment (plus 25% of any applicable Benefited Assessment).

## ARTICLE 2

### PROPERTY AND PERSONS BOUND BY THIS DECLARATION; ANNEXATION

**2.1 Purpose and Binding Effect.** Declarant intends by this Declaration to impose upon the Covered Property covenants, conditions, restrictions and easements to create a general plan of development for the Covered Property and to provide a flexible and reasonable procedure for the administration, maintenance, preservation, use and enjoyment of the Covered Property. Declarant declares that all of the Covered Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value, desirability and appearance of the Covered Property. Declarant further declares that all easements, restrictions, conditions and covenants in this Declaration shall run with the Covered Property and shall be binding upon and inure to the benefit of Declarant and all Owners, Occupants and Residents and all other Persons having or acquiring any right, title or interest in the Covered Property or any part thereof, their heirs, successors, successors in title and assigns. By acceptance of a deed or by acquiring any interest in any of the Covered Property subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, tenants, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. Each Person who acquires any right, title or interest in the Covered Property, or any part thereof, agrees to abide by all of the provisions of the Governing Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Governing Documents, or as to the compliance of any of the provisions of the Governing Documents with public laws, ordinances and regulations applicable thereto.

As portions of the Covered Property are developed, Declarant, without obligation, may Record one or more Tract Declarations creating Parcels, designating Land Use Classifications and Common Area, and may establish such additional covenants, conditions and restrictions as may be appropriate for the respective portions of the Covered Property. Nothing in this Declaration or in any Tract Declaration shall be construed to prevent or limit Declarant's right to modify any part of the Development Plan, or to dedicate or convey portions of the Covered Property then owned by Declarant or a Declarant Affiliate for uses other than as a Lot, a Parcel, or Common Area.

**2.2 Disclaimer of Implied Covenants.** Declarant makes no representation or warranty that the Project will be developed in accordance with the zoning and development plan, including, without limitation, the Master Plan, as it exists as of the Recording of this Declaration or that the Project will ever be developed. Each Owner, Occupant, Resident and other Person acquiring any Lot or other property in Project acknowledges that the zoning and development plan, including, without limitation, the Master Plan, may be amended from time to time by Declarant as approved by City. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Governing Documents or as to the compliance of any provision of the Governing Documents with public laws, ordinances, or regulations applicable to Project. Nothing contained in this Declaration and

nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration.

**2.3      Association Bound.** This Declaration shall be binding upon and benefit the Association, its successors and assigns.

**2.4      Annexation of Annexable Property.**

**2.4.1      Annexation.** All or any portion of the Annexable Property may be annexed to the Covered Property and become subject to this Declaration and to the jurisdiction of the Association without the approval, assent, or vote of the Association or its Members provided that a Declaration of Annexation covering such portion of the Annexable Property is Recorded and is executed by either (i) Declarant and all Owner(s) of such portion of the Annexable Property (if not Declarant), or (ii) James Trust and all Owner(s) of such portion of the Annexable Property (if not James Trust). Such execution and Recording of a Declaration of Annexation shall constitute and effectuate the annexation of the portion of the Annexable Property described therein, making said real property subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association, and thereafter, the Annexable Property so annexed shall be part of the Covered Property and all of the Owners of Lots in the Annexable Property so annexed shall automatically be Members of the Association. Although Declarant and James Trust shall have the ability to so annex all or any portion of the Annexable Property if agreed to by all Owner(s) thereof, neither Declarant nor James Trust, individually, shall be obligated to annex all or any portion of the Annexable Property, and such Annexable Property shall not become subject to this Declaration unless and until a Declaration of Annexation annexing such Annexable Property shall have been executed by Declarant or James Trust and such Owner(s) and Recorded. The Declaration of Annexation may contain provisions for the establishment of a Neighborhood Association, if approved and acknowledged by the Association or if established by Declarant or James Trust in the Declaration of Annexation.

**2.4.2      Second Declarant.** Upon execution and Recording of a Declaration of Annexation by James Trust, James Trust, at its election, shall have the right to designate an Owner thereof to be a Declarant under this Declaration with respect to the portion of the Annexable Property governed by such Declaration of Annexation by making such election in the Recorded Declaration of Annexation, provided that at no point may there be more than two (2) Declarants under this Declaration.

**2.5      Annexation of Other Covered Property.** Prior to the termination of Declarant Control Period, Declarant may cause real property other than the Annexable Property to be annexed to the Covered Property and become subject to this Declaration and subject to the jurisdiction of the Association; provided, however, that Declarant must obtain the consent of the owner of such property. Except with respect to the Annexable Property, after the termination of Declarant Control Period, real property may be annexed to the Covered Property and become subject to this Declaration and subject to the jurisdiction of the Association only with the prior written consent of Members holding at least seventy-five percent (75%) of the votes of the Association and the consent of the owner of such property. In the event that any additional real property is annexed to the Covered Property, such annexation shall be effected by the

Recordation of a Declaration of Annexation covering the real property sought to be annexed and executed by the Board and by the owner(s) of the real property sought to be annexed

**2.6 Annexation by Owners.** The Association may, from time to time, annex to the Covered Property additional Annexable Property provided that such annexation has been approved by the Voting Members representing at least 75% of the total votes then entitled to be cast by Class A Members, and Declarant so long as Declarant is a Member of the Association, with or without a meeting. To effect an annexation pursuant to this Section 2.6, a Declaration of Annexation covering the Annexable Property shall be executed by the President of the Association and attested to by the Secretary of the Association, and executed by the owner of the Annexable Property. The Recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the Annexable Property described therein, making such Annexable Property and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association.

Any annexation by the Association during any period when there is a Class B Membership shall have the written approval of the Class B Member. Absent such approval, any such annexation shall be deemed void.

**2.7 Deannexation Without Approval.** During the Declarant Control Period, a portion or portions of the Property may be deannexed from the Covered Property and be withdrawn from this Declaration and the jurisdiction of the Association provided that a Certificate of Deannexation covering such portion of the Property is executed by Declarant and all Owner(s) of such portion of the Covered Property to be deannexed and is Recorded. It is specifically understood that this right of de-annexation or withdrawal may be exercised in Declarant's sole and absolute discretion, subject to approval rights of the Owner(s) of such portion of the Covered Property to be deannexed, and that once de-annexed or withdrawn, none of the provisions hereof shall apply to or encumber the deannexed land, and, further, the Class B Member may cause the Association to grant and convey such easements as may be necessary to benefit such land de-annexed or withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper

**2.8 Declarations of Annexation and Certificates of Deannexation.** The annexations and deannexations authorized under the foregoing Sections shall be made by Recording a Declaration of Annexation or similar instrument that shall extend the plan of this Declaration to such property or a Certificate of Deannexation that removes the portion of the Covered Property covered thereby from the plan of this Declaration.

## ARTICLE 3

### EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREA

**3.1 Easements and Rights of Enjoyment.** Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Area, that shall be appurtenant to and shall pass with the title to each Owner's Lot or Parcel. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Area so long as they remain

Occupants. The foregoing grants and rights are subject to the following limitations, in addition to all other limitations and reserved powers set forth in this Declaration:

**3.1.1 Right to Modify and Change.** The rights, duties and obligations of the Association, and the reserved right of Declarant, and of the Association, to modify the use of Common Area, or to convey same free of claims or rights of the Owners or Members;

**3.1.2 Special Use Fees.** The right of the Association pursuant to this Declaration to charge reasonable Special Use Fees for the use of the Common Area. Any such Special Use Fees shall be set by the Board from time to time, in its sole discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those Common Areas selected by the Board to be subject to a Special Use Fee, and shall be intended to collect revenue from the actual users of such selected Common Area so that all of the costs of operating such selected Common Area are not borne by all of the Owners through Regular Assessments, but rather are borne, at least in part, by the Owners, Occupants and other Persons utilizing such selected Common Area;

**3.1.3 Suspension of Rights.** The right of the Association to suspend the voting rights and the rights of use and enjoyment of the recreational components of the Common Area of any Owner or Occupant, as the case may be, for any period during which an Assessment remains delinquent, or for a period not to exceed 60 days for any single infraction of this Declaration, a Recorded Tract Declaration, or the Association Rules (provided such suspension may be continued if the infraction remains uncured);

**3.1.4 Limitation of Guests.** The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Area; and

**3.1.5 Regulation, Mortgages and Conveyances.** The right of the Association to regulate use of the Common Area in accordance with this Declaration, and to mortgage or convey portions of Common Area with the affirmative vote or written consent, with or without a meeting, of Declarant and Voting Members representing at least 2/3rds of the total votes allocable to Lots and Parcels.

**3.1.6 Power of the Association.** Notwithstanding the foregoing, the Association may at any time convey, and Declarant may cause the Association to convey, portions of Common Area, including areas impacted by encroachment areas, boundary line discrepancies, survey errors and other such matters, and portions of Common Area determined by Declarant to be more burdensome or costly to own than the accompanying benefit to the Association would warrant, and such conveyance may be made without the consent or vote of any other Person or Member, should Declarant or the Board determine that such conveyance or transfer is in the best interests of the Association or Covered Property. Furthermore, Declarant may at any time, with the prior written approval of all Developer Owners, resubdivide Common Area into Lots, Parcels or other Common Area or dedicated land, and may cause the Board or Association to execute such instruments as may be necessary to cause such resubdivision or dedication, and no consent or approval shall be required of any other Members nor shall a meeting of Members be required. Any sale, disposition or resubdivision of the Common Area

shall serve to extinguish any rights or interests therein of Owners pursuant to the provisions hereof.

In addition, the Association shall in all cases have the right to grant easements and to convey and dedicate lands and interests therein for purposes such as public roads, streets, drainageways, culverts, parks, and sewer facilities, and such action shall not require the approval of any Owners or Members of the Association.

**3.2 Delegation of Use.** Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his or her rights of use and enjoyment in the Common Area to the members of his or her family or his or her Occupants, or guests subject to the limitations set forth herein and in the Association Rules, and in the event of such delegation, including any lease of a Lot, the Owner shall be deemed to have relinquished his or her right of use and enjoyment for the period of such lease or delegation. Without limitation, the Association Rules may limit the number of guests, prescribe restrictions on certain types of gatherings or events, and impose Special Use Fees for certain gatherings or events.

**3.3 Waiver of Use.** No Owner shall be exempt from personal liability for Assessments, nor shall any Owner have any right to release a Lot or Parcel from the liens or charges arising under this Declaration or any Tract Declaration by waiver of the right of use and enjoyment of Common Area or for any other reason, and no Owner shall in any fashion or by any means have a right of set-off of claims against any sum owed to the Association.

**3.4 Acceptance of Certain Common Area and Other Areas.** Declarant may convey to the Association improved or unimproved real estate located within the Covered Property or Annexable Property, personal property, and leasehold and other property interests; provided, however, that any Improvements within any such property must be in good condition and repair at the time of conveyance. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed, including, but not limited to, restrictions governing the use or maintenance of such property. Future Common Area to be accepted may include, but shall not be limited to, recreational features, parks, exercise stations, sports courts, playground facilities, open spaces, trails, clubhouses, pools and other areas or facilities, but no representation or warranty is made as to whether or not any such features or facilities shall be offered or included in the Covered Property. It is acknowledged that should a future feature, such as a recreational amenity, be included within the Common Area, the Association shall have the right to increase Assessments by the maximum amount permitted by law to assure adequate funds, and shall further have the right to impose a Special Assessment during such initial fiscal years as may be necessary due to limitations upon increases in the Regular Assessment.

**3.5 Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area for the benefit of Declarant and Developer Owners, and their contractors and the utility companies providing utility service to the Project for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, high speed internet, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to

erect and maintain the necessary equipment on the Common Area, but no sewers, electrical lines, water lines, cable or high speed internet lines, or other utility or service lines shall be installed or located on the Common Area except as designed and constructed, or approved, by Declarant or as otherwise approved by the Board.

**3.6 Use for Sales and Leasing Purposes.** Declarant and Developer Owners (with the approval of Declarant, which approval will not be unreasonably withheld) shall have the right to maintain sales or leasing offices, model homes, management offices, a design center, and parking areas, for the purpose of accommodating Persons visiting such model homes and sales offices, on the Covered Property owned by Declarant or Developer Owners and the right and an easement to maintain advertising, identification or directional signs on the Common Area. Declarant reserves for itself and for each Developer Owner (with the approval of Declarant, which approval will not be unreasonably withheld) the right to (i) place management offices, sales and leasing offices, model homes, and parking areas on any portion of the Common Area conveyed by Declarant or such Developer Owner, as applicable, to the Association, in such number, of such size and in such locations as Declarant or the Developer Owner (with the approval of Declarant, which approval will not be unreasonably withheld) deems appropriate, and (ii) use any recreational facilities within the Project for management and sales activities. The rights granted to Declarant and Developer Owners under this Section shall be in such number, of such size and in such locations as Declarant and each Developer Owner (with the approval of Declarant, which approval will not be unreasonably withheld) deems appropriate and shall survive the expiration or termination of Declarant Control Period.

**3.7 Declarant's and Developer Owners' Easements.** Declarant and Developer Owners, for themselves, their duly authorized agents, employees, representatives, successors and assigns (with the approval of Declarant, which approval will not be unreasonably withheld), shall have the right and an easement on and over the Common Area conveyed by Declarant or such Developer Owner, as applicable, to the Association, to construct all Improvements that Declarant or Developer Owners may deem necessary and to use such Common Area or other portions of the Covered Property owned by Declarant or Developer Owners, respectively, for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project, including without limitation: (a) temporary construction easements; (b) easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (c) easements for the construction, installation and maintenance of Improvements on the Covered Property or Improvements reasonably necessary to serve the Covered Property. Declarant and Developer Owners shall have the right and an easement upon, over, and through the Common Area as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by Declarant or Developer Owners by this Declaration, that shall include, but not be limited to, a right of ingress and egress over the Common Area or other portions of the Covered Property owned by Declarant or Developer Owners for the purposes stated in this Section. Declarant also reserves for itself the nonexclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of the Project. No Developer Owner shall store supplies of building materials or equipment on any portion of the Covered Property other than those specifically designated for such purposes and approved in

writing by Declarant. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

**3.8 Easement in Favor of Association**. The Lots and Parcels (except for the interior of a Residence or other buildings) are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

**3.8.1** For inspection of the Lots and Parcels in order to verify the performance by Owners, their guests, and the other Occupants of a Lot or Parcel of all items of maintenance and repair for which they are responsible, and other compliance with applicable Governing Documents;

**3.8.2** For inspection, maintenance, repair and replacement of the Common Area reasonably accessible only from such Lots or Parcels;

**3.8.3** For correction of emergency conditions in, under, upon or over one or more Lots or Parcels; and

**3.8.4** For inspection, maintenance, repair, and replacement of walls and fences that the Association is obligated to maintain.

**3.9 Easements for Cross-Drainage**. Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Covered Property; provided that no Person shall alter the drainage as it exists on any Lot at the time of transfer of such Lot from Declarant or Developer Owner in a manner that would materially alter or impact the drainage of storm water onto adjacent portions of the Covered Property or the Annexable Property without the consent of the owner(s) of the affected property and Declarant during any period it owns any portion of the Covered Property or the Annexable Property.

**3.10 Easements for Encroachments**. To the extent that any Improvement upon a Lot, Parcel or Common Area that was constructed on the Covered Property as part of the original construction by Declarant or a Developer Owner encroaches on any other Lot, Parcel or Common Area as a result of unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon or any other reason other than the intentional encroachment on a Lot, Parcel or Common Area, a valid non-exclusive easement for the encroachment, and for the maintenance thereof, exists to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. If any structure on any Lot, Parcel, Common Area or other area is repaired, altered or reconstructed in accordance with the original plans and specifications, similar encroachments and easements for the maintenance thereof shall exist.

**3.11 Use and Benefit Easements**. On certain Common Area, particularly where perimeter or similar walls are to be built (including yard walls, landscape walls, subdivision boundary walls and the like), such walls may be constructed within the Common Area at varying distances from the adjacent Lot line in order to avoid monotony of design. Portions of the Common Area may be located on the Lot side of any such dividing wall (each, an "Easement Area"). Each Easement Area will adjoin and be contiguous to a Lot (each, a "Dominant Lot").

Declarant or the Association may, in its sole discretion, at any time and from time to time, grant to the Owner of a Dominant Lot, either in a Tract Declaration or in a separate easement, a perpetual exclusive use and benefit easement over the Easement Area abutting that Dominant Lot for the use, benefit and enjoyment of that Owner, and responsibility for maintenance and repair of such area. Each such easement shall run with the land and be appurtenant to the abutting Dominant Lot and may not be sold, transferred or otherwise conveyed apart therefrom.

**3.12 Avigation Easement.** The Property is located in an Airport Influence Area of the as Prescott Municipal Airport, Ernest A, Love Field and is subject to an avigation easement which exists or is required with respect to the Property. Additional information pertaining to aircraft operation and airport development may be obtained by contacting the City.

## ARTICLE 4

### MASTER PLAN

**4.1 Master Plan.** The Covered Property is subject to the Master Plan and the Master Plan Administration Agreement. All development and use of the Covered Property must be in compliance with the Master Plan and the Master Plan Administration Agreement.

**4.2 Additional Contributions from Sales.** The Master Plan Administration Agreement contains an obligation for the seller of any portion of the Covered Property to contribute an amount equal to the Additional Contribution (as defined in the Master Plan Administration Agreement) upon the closing of the sale of such portion of the Covered Property, subject to certain exemptions more particularly set forth in the Master Plan Administration Agreement, including, without limitation, exemptions for the initial or any subsequent sale or lease of a Public Lot (as defined in the Master Plan Administration Agreement, and which definition includes any residential lot which has been finally subdivided and sold (individually, and not in bulk) to the purchaser or user thereof).

**4.3 Approvals Required.** To the extent the Master Plan expressly requires approval of the matters set forth in this Section 4.3, such matters require the prior written approval or waiver by the Master Plan Administrator, and to the extent the Master Plan does not expressly require the approval of such matters, such matters require the prior written approval or waiver by Declarant or its delegatee:

**4.3.1** Any Improvements, alterations, repairs, excavation, grading, landscaping or other work that in any way alters the exterior appearance of the Covered Property or Improvements thereon from their natural or improved state;

**4.3.2** Any building, fence, exterior wall, pool, roadway, driveway or other Improvement or grading commenced, erected, maintained, altered, changed or made on any Lot or Parcel; and

**4.3.3** Any exterior trees, bushes, shrubs, plants or other landscaping Visible From Neighboring Property planted or placed upon the Covered Property except for replacements of plants previously approved and that remain acceptable in accordance with the

then current design guidelines under the Master Plan, if applicable, or as established by Declarant.

#### **4.4 Design Review Generally.**

**4.4.1 Broad Reserved Rights of Declarant.** Each and every Owner by accepting a deed or otherwise having ownership, possession or control over any Lot or Parcel, agrees that Declarant, as the initial entity planning for the development of the Covered Property and Annexable Property, and as an initial Owner of all or portions of the Covered Property and Annexable Property, has a legitimate interest in seeing that the Covered Property is developed in a manner consistent with Declarant's overall Development Plan, as that plan may be changed from time to time. Declarant's rights under this Article IV shall not terminate upon the expiration of Declarant Control Period or if Declarant ceases to own any portion of the Covered Property or Annexable Property, but shall last until Declarant or its delegate affirmatively relinquishes such rights in a Recorded instrument.

**4.4.2 Delegation by Declarant.** Declarant may delegate all or a portion of its reserved rights under this Section (except approval of plans for a Developer Owner) to either or both of a committee, including a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association, although Declarant may retain certain rights of review and approval and may also delegate certain of its rights of review and approval to others. Certain portions of the Covered Property may be treated differently for purposes of design review. Upon any delegation, Declarant shall be fully released of all obligation, right and responsibility with respect to the functions of the Reviewing Authority so delegated.

**4.4.3 Reviewing Authority.** The entity exercising the approval authority over the matters set forth in Section 4.3 is referred to as the "**Reviewing Authority**." In any case in which Declarant has exercised the rights as the Reviewing Authority and has not assigned or delegated rights of review and approval, the Association shall nevertheless, with Declarant's approval, have full rights of enforcement of the provisions hereof, and may take legal and other action against any Owner or other Person, or its agents, contractors and subcontractors, who may be in violation of the provisions hereof, or who may have acted without approval of the Reviewing Authority.

**4.4.4 Design Review Guidelines.** Declarant shall have the right to adopt design review guidelines, and if adopted, such guidelines will be deemed a Governing Document and have the same force and effect as the Association Rules. Declarant may subsequently amend and supplement such guidelines, as in harmony with the general aesthetics of the Covered Property. Such guidelines may interpret, implement and supplement this Declaration, and may set forth procedures for review and the standards for development within all or various portions of the Covered Property or Annexable Property, and the guidelines may be different for different Neighborhoods and areas of the Covered Property, which reflect the different character of those areas.

**4.4.5 Deemed Approval For Developer Owners.** If Declarant (or its delegate) is the Reviewing Authority and Declarant (or its delegate) fails to approve or disapprove

an application for approval within thirty (30) days after the complete application, together with any fee payable pursuant to Section 4.8 and all supporting information, plans and specifications requested by Declarant (or its delegatee) have been submitted, a Developer Owner submitting such plans may deliver a demand that Declarant act on the plans submitted by the Developer Owner. If Declarant (or its delegatee) does not disapprove the plans within fifteen (15) days after receipt of the demand from the Developer Owner, then the plans shall be deemed approved. This Section 4.4.5 does not apply to any approvals required to be obtained from the Master Plan Administrator, which approvals shall be governed by the Master Plan and Master Plan Administration Agreement.

**4.4.6 Waiver and Variance by Declarant.** If Declarant (or its delegatee) is the Reviewing Authority, Declarant (or its delegatee) may grant variances and waivers from the requirements of this Article IV if Declarant (or its delegatee) believes it is in the best interests of the Covered Property to do so, or if hardship justifies the variance. Any waiver or variance must be specifically applied for in writing, specifying the specific waiver or variance requested. Approval of any waiver or variance shall not be deemed to constitute a waiver of any right to withhold approval of any similar waiver, variance, plan, drawing, specification or matter subsequently submitted for approval. This Section 4.4.6 does not apply to any approvals required to be obtained from the Master Plan Administrator, which approvals shall be governed by the Master Plan and Master Plan Administration Agreement.

**4.5 Changes or Deviations.** Once approved by the Reviewing Authority, no material changes or deviations in or from the plans and specifications shall be permitted without approval of the change or deviation by the Reviewing Authority.

**4.6 Verbal Statements.** In no event shall the Reviewing Authority be bound by any verbal statements.

**4.7 Liability.** Neither the Master Plan Administrator (nor, if applicable, any member thereof), Declarant, nor Declarant Affiliates shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

**4.7.1** The approval or disapproval of any plans, drawings or specifications, whether or not defective;

**4.7.2** The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

**4.7.3** The development of any Lot or Parcel;

**4.7.4** The execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct; or

**4.7.5** Any delay resulting from the review or approval process.

#### **4.8 Fees.**

**4.8.1** To the extent any matters set forth in this Article IV requires the approval of the Master Plan Administrator, the applicant for such approval shall pay any fees required to be paid under the Master Plan Administration Agreement in order to obtain such approval.

**4.8.2** To the extent any matters set forth in this Article IV requires the approval of Declarant, Declarant may establish a reasonable processing fee for the costs of considering any requests for approvals submitted to Declarant, which fee shall be paid at the time the request for approval or review is properly submitted or as may otherwise be required by Declarant.

**4.9 Inspection.** The Reviewing Authority or authorized consultant of the Reviewing Authority, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Parcel, after reasonable notice to the Owner of such Lot or Parcel, in order to inspect the Improvements constructed or being constructed on such Lot or Parcel to ascertain that such Improvements have been, or are being, built in compliance with the approval of the Reviewing Authority, this Declaration, and any applicable Tract Declaration.

### **ARTICLE 5**

#### **LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS**

**5.1 Land Use Classifications.** As portions of the Covered Property are readied for development, Land Use Classifications may be fixed by Declarant, as may be required by the Master Plan, in a Tract Declaration Recorded at such time as the applicable portion of the Covered Property is conveyed by deed or, if retained by Declarant, at such time as Declarant begins development thereof. If any provision of a Tract Declaration is inconsistent with any provision of this Declaration, the provisions of this Declaration shall control. If a Parcel is subdivided and developed or partially developed prior to Recordation of a Tract Declaration establishing the Land Use Classification, then Declarant may later Record the appropriate Tract Declaration with the consent of the Owner(s) of the Parcel and/or Lots, and until such time the Land Use Classification shall be deemed to be Single Family Residential Use, together with common area tracts for the benefit of the Single Family Residential Use; provided, however, that Declarant and each Developer Owner (with the approval of Declarant, which approval will not be unreasonably withheld) may use the Covered Property, including any Lots or Parcels, for any of the foregoing uses as may be required, convenient, or incidental to the construction and sale of Residences thereon, including, for the purposes of a construction yard and signage.

Except with respect to Covered Property owned by Declarant, no Tract Declaration, or further covenants, conditions, restrictions, or easements, or any amendments or modifications thereto, shall be Recorded against any Lot or Parcel without the prior written approval of Declarant or, following the expiration of Declarant Control Period, of the Board, and without such approval such Tract Declaration or further covenants, conditions, restrictions, and

easements, or any amendments or modifications thereto, shall at Declarant's or the Board's option be deemed null and void. All Tract Declarations or other Recorded covenants, conditions, or restrictions, or any amendments or modifications thereto, shall be consistent with and subordinate to this Declaration and shall contain such provisions as Declarant or the Board shall reasonably require.

**5.2     Listing of Land Uses.** The Land Use Classifications are:

- 5.2.1**     "Single Family Residential Use";
- 5.2.2**     "Multi-Family Residential";
- 5.2.3**     "Commercial"; and
- 5.2.4**     "Common Area".

**5.3     Use Restrictions.**

**5.3.1**     Declarant has established a general plan of development for the Covered Property as a planned community in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Covered Property, and the vitality of and sense of community within the Covered Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the Project. The Covered Property is subject to the Master Plan restrictions described in Article IV, the other provisions of this Declaration governing individual conduct, and uses of or actions upon the Covered Property, and the initial Use Restrictions, as each may be amended from time to time, all of which establish affirmative and negative covenants, easements, and restrictions on the Covered Property. The Association shall provide, without cost, a copy of the Use Restrictions and Association Rules then in effect to any requesting Member or Eligible Mortgage Holder.

**5.3.2**     During the Declarant Control Period, Declarant may amend, modify, cancel, limit, create exceptions to, or expand the Use Restrictions. Thereafter, the Board may amend, modify, cancel, limit, create exceptions to, or expand the Use Restrictions provided that any such action may be nullified by the affirmative vote of Owners representing at least 67% of the total Class A votes entitled to be cast by the membership. Notwithstanding the foregoing, in either case, to the extent such Use Restrictions affect any Lots or Parcels owned by a Developer Owner, such Use Restrictions shall not be amended, modified, canceled, limited, expanded, or exceptions thereto created without prior written consent of the applicable Developer Owner. At least 30 days prior to the effective date of any such action taken by the Board, a copy of the amendment or rule, specifying the effective date shall be posted in a prominent place within the Covered Property or delivered to the Members. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. In addition to posting or delivering the amendment or rule, if such amendment or rule modifies, cancels, limits, creates exceptions to, or expands the Use Restrictions, the Association shall Record an amendment to this Declaration setting forth the amendment or rule.

**5.3.3** Nothing in this Article shall authorize the Board to modify, repeal, or expand the Declaration (with the exception of the Use Restrictions). This Declaration may be amended only as provided herein.

**5.4 Party Walls.** Except as hereinafter provided, the rights and duties of Owners of contiguous Lots or Parcels that have shared walls or fences ("**Party Walls**") shall be as follows:

**5.4.1** Each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof.

**5.4.2** If a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, or guests, the Owner shall be obligated to promptly rebuild and repair the Party Wall at the Owner's sole expense, but in any event such repair or rebuilding shall be completed no later than sixty (60) days from the date such damage occurred. Any dispute over an Owner's liability shall be resolved as provided in Section 5.4.4 below.

**5.4.3** In the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, or guests, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots or Parcels adjoin the damaged or destroyed portion of such Party Wall to promptly rebuild and repair such Party Wall, but in any event such repair or rebuilding shall be completed no later than sixty (60) days from the date such damage occurred. The expenses associated with repairing or rebuilding a Party Wall under this Section shall be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots or Parcels on the damaged or destroyed Party Wall.

**5.4.4** In the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Board; whose decision shall be binding unless such decision may be appealed to the Board, in which event the Board's decision shall be binding and final.

**5.4.5** Notwithstanding the foregoing, and unless otherwise agreed in writing by the Association, in the case of walls or fences: (a) between Common Area and Lots; (b) situated on Common Area within or adjacent to a Lot, or (c) on the exterior perimeter boundaries of the Project or the interior perimeter boundaries of neighborhoods within the Project (collectively, "**Perimeter Walls**"), the Association will repair and repaint the portion of the Perimeter Walls that face the Common Area or face outside of the Project or the neighborhood, and the Owner will be responsible for repairing and repainting that portion that faces into the Lot. In the event that Perimeter Walls have to be replaced, the costs of replacement will be the responsibility of the Association provided that the replacement was not necessitated by action of the Owner of the Lot or their guests or invitees.

**5.5 Restriction on Further Subdivision, Covered Property Restrictions and Rezoning.**

**5.5.1** So long as Declarant is a Member of the Association, all subdivision Plats and Tract Declarations must be submitted to and approved by Declarant before being

Recorded or approved by the City, as applicable. Except for property owned by Declarant, after a subdivision Plat has been approved, no Lot or Parcel, or any portion of a Lot or Parcel, shall be further subdivided and no portion less than all of the Lot or Parcel shall be conveyed or transferred by any Owner without the prior written approval of Declarant. The combining of a Lot or Common Area with an adjacent Lot or Common Area, where no additional Lot is created, and that is approved by the Board, shall not be deemed a resubdivision in accordance with the foregoing requirements.

**5.5.2** No proposed application for rezoning, variance or use permit for any portion of the Covered Property shall be made, filed, submitted to, or Recorded with the County or any other governmental authority or agency unless it has first been approved by Declarant so long as Declarant is a Member of the Association.

**5.5.3** This Section 5.5 shall not apply to portions of the Covered Property owned by Declarant or a Declarant Affiliate or to subdivision Plats or Tract Declarations submitted or proposed by Declarant or a Declarant Affiliate and pertaining to portions of the Covered Property owned by Declarant or a Declarant Affiliate. Further, Declarant reserves the absolute right, without any other consent or approval, to resubdivide and change the use of any portion of the Covered Property then owned by Declarant or a Declarant Affiliate, including any Common Area, Lots or Parcels, and may cause the Board or the Association to execute such instruments as may be necessary to accomplish the same.

**5.5.4** Declarant may at any time in writing relinquish all or a portion of its approval rights under this Section 5.5. After Declarant no longer is a Member of the Association, or after Declarant may have relinquished its rights under this Section, the Board shall succeed to the right to approve of subdivision Plats or Tract Declarations, unless Declarant has assigned such right to one or more Developer Owners, in which case the Board shall succeed to such rights only after such Developer Owners no longer own any portion of the Covered Property or Annexable Property.

**5.6 Declarant's Exemption and Rights of Developer Owners.** Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant, a Declarant Affiliate, Developer Owners (with the approval of Declarant, to the extent such approval is expressly required hereunder), or their agents during the period of development and construction on the Covered Property of Improvements, landscaping or signs deemed necessary or appropriate by Declarant, a Declarant Affiliate, or Developer Owners, in their sole discretion, to the development or sale of property within the Covered Property.

**5.7 Savings Clause.** The provisions of this Declaration, including but not limited to the Use Restrictions, shall be construed to be consistent with Applicable Laws, and should any provision violate Applicable Law, then Applicable Law shall govern. Without limitation, no provision hereof shall be construed to prohibit the placement of solar heating or other such devices or antennae on Lots, provided such placement conforms to any provisions of this Declaration or the Association Rules that do not conflict with Applicable Laws, nor shall the provisions hereof prohibit the placement of the American Flag or the parking of public service vehicles as permitted by Applicable Law, subject to the Association Rules not in conflict with such Applicable Laws.

**5.8 Model Homes.** The provisions of this Declaration that prohibit nonresidential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by Declarant and/or Developer Owners engaged in the construction and/or sale of Residences within the Covered Property and parking incidental to the visiting of such model homes so long as the location of such model home is approved by Declarant, which approval shall not be unreasonably withheld, conditioned or delayed. Declarant shall also permit other adjacent areas to be used for parking in connection with the showing of model homes provided such parking areas are in compliance with Applicable Law.

## ARTICLE 6

### ORGANIZATION OF ASSOCIATION

**6.1 General Purpose and Charge.** The Association will be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by Applicable Law and set forth in the Governing Documents. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration. The Association will be formed prior to or upon the Recordation of this Declaration, but in no event later than the time as Declarant initially conveys Common Areas to the Association and Improvements thereon are accepted by the Association.

**6.2 Board of Directors and Officers.** The affairs of the Association shall be managed and conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During Declarant Control Period, the directors of the Association shall be appointed by and may be removed solely by Declarant. After Declarant Control Period, or at such earlier time as Declarant relinquishes its rights to appoint the Board, directors shall be elected by the Members in accordance with the Articles and Bylaws; provided that so long as Declarant owns a Lot in the Covered Property, Declarant may retain the right to appoint one (1) director. Unless the Governing Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by Declarant to the Class A Members. The Board may appoint or engage a managing agent to be responsible for the day-to-day operation of the Association and the Common Area. The Board shall determine the compensation, if any, to be paid to the managing agent.

**6.3 Association Rules.** By a majority vote of the Board, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property and the Common Area. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth

herein, and may be enforced in the same manner as the provisions of this Declaration. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association during normal business hours. During the period while the Class B Membership continues to exist, the Class B Member may disapprove of actions of the Board to adopt, amend or repeal the Association Rules.

**6.4 Personal Liability; Indemnification.** Neither the Association, the Master Plan Administrator, nor any Board member, officer, committee member, employee, managing agent, or representative of the Association, nor Declarant nor any Developer Owner by reason of having appointed any Board member, shall be personally liable to any Owner, Occupant, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct. To the fullest extent permitted by law, Declarant and every Board member and officer of the Association (to the extent a claim may be brought against Declarant by reason of any action taken by such person on behalf of the Board, including liability caused by such Person's negligence, the appointment, removal or control over members of the Board) shall be indemnified by the Association, and every other Person serving as an employee or direct agent of the Association, or on behalf of the Association as a member or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or, in the case of Declarant, by reason of having appointed, removed or controlled or failed to control members of the Board), or any settlement thereof, whether or not he is serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that the Person to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence, fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise.

**6.5 Mergers or Consolidations.** The Association shall have the right, power and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association.

**6.6 Contracts with Others.** Adjacent to or in the vicinity of the Covered Property are properties that have been or, in the future, may be developed as independent areas. Declarant or the Association may enter into a covenant to share costs with all or any of the owners of such adjacent or nearby areas that allocates access, use of Common Area, maintenance responsibilities, expenses, and other matters between the Association and such property owners. Unless such adjacent or nearby properties are annexed in accordance with the provisions hereof, the owners of such adjacent or nearby properties shall not be entitled to vote on Association matters, shall not be Members of the Association, and shall not be subject to Assessments or other conditions or restrictions set forth in this Declaration.

**6.7 Neighborhoods**. Lots may be located within a Neighborhood and may be subject to additional covenants. In addition, the Owners of Lots within a particular Neighborhood may be members of a Neighborhood Association. Any designation of a Neighborhood and the separate rights and obligations of the Owners in such Neighborhood shall, if applicable, be set forth in a Tract Declaration.

## ARTICLE 7

### MEMBERSHIPS AND VOTING

**7.1 Votes of Owners**. Every Owner of a Lot or Parcel (other than an Owner who owns solely Exempt Property), and Declarant and each Developer Owner so long as it is a Class B or Class A Member, shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues or, in the case of Declarant, so long as it owns any Lot or Parcel or retains a Class A or Class B Membership. Each Class A Member shall have the following applicable number of votes in regard to votes of the Members of the Association:

**7.1.1 Lots**. In the case of Lots, one vote for each Lot owned.

**7.1.2 Single Family Parcels**. In the case of a Single Family Parcel that has not been divided into Lots by a subdivision Plat or other Recorded instrument, six votes for each Acre and partial Acre owned within such Parcel (with each such Owner to have at least one whole vote). For example, if a Single Family Parcel includes 5.2 Acres, the Class A Member will have 36 votes. All votes attributed to all or any portion of an unsubdivided Parcel as a "Parcel" shall cease and be made applicable to Lots when all or such portion of the area is platted or otherwise divided into Lots.

Any Class B Member shall have three (3) votes for each Lot owned and eighteen (18) votes for each Acre within a Parcel owned.

**7.2 Membership Appurtenant to Ownership**. Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable. There shall be only the Memberships for each Lot and Parcel as are described herein. Joint ownership or ownership of undivided interests in any property as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot or Parcel. Rather, the votes must be cast together in one unit.

**7.3 Declarant**. Declarant shall be a member of the Association for so long as it holds a Class A or Class B Membership.

**7.4 Classes**. The Association shall have two classes of Members:

**7.4.1 Class A**. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1.

**7.4.2 Class B.** The Class B Member shall be Declarant. The Class B Membership for Declarant shall terminate and be converted to a Class A Membership if the holder of the Class B Membership in writing relinquishes all of its Class B Membership while it still owns any Lot or Parcel.

Declarant shall have the right to assign its rights and privileges as Declarant and as the Class B Member in whole or in part. Such an assignment may include all special voting rights and other rights and privileges set forth herein, and shall be in the form required in Section 16.8.

If Declarant elects to relinquish its Class B Membership while it still owns any Lots or Parcels, Declarant shall be a Class A Member entitled to the Class A votes attributable to all Lots and Parcels that it owns.

**7.5 Control by Declarant; Rights of the Class B Member.** Declarant, as the Class B Member, has the right to control the Association. Such control shall exist by virtue of the right, as provided herein, to amend this Declaration and to appoint the Board of Directors of the Association (as provided herein), as well as their replacements in the event of death, removal, resignation or otherwise. Additionally, Declarant may veto amendments to the Declaration or the other Governing Documents proposed by the Class A Members. Declarant shall have such additional and other rights and powers as are set forth herein or in other Governing Documents, including the right to disapprove of actions of the Board.

**7.6 Right to Vote.** In the event that a Lot or Parcel is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot or Parcel, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot or Parcel unless objection is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one Person casts or attempts to cast a vote for a particular Lot or Parcel all such votes shall be deemed void. The vote for each Member must be cast as a single unit, and solely by the Voting Member as and when applicable. Fractional votes shall not be allowed.

**7.7 Transfer of Membership.** The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Parcel, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Applicable Law. Any attempt to make a non-approved form of transfer shall be void. Any transfer of ownership in a Lot or Parcel shall operate to transfer the Membership appurtenant to ownership to the new Owner. However, no change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence of such change (e.g., a Recorded deed showing the name of the Owner of such Lot or Parcel).

## ARTICLE 8

### ASSESSMENTS AND CREATION OF LIEN

**8.1 Creation of Assessment Lien; Personal Obligation of Lot Owner.** Each Owner by acceptance of a deed for any Lot or Parcel (whether or not it should be so expressed in any such deed or any other instrument) is deemed to covenant and agree to pay to the Association the Assessments and Special Use Fees when due. The amount and time for payment of the Assessments and Special Use Fees shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Assessments and Special Use Fees, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate.

Assessments, together with interest thereon and late charges and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time when such Assessments become due and payable. The lien created by this Article shall have priority over any lien for assessments asserted by any other community or property owners association, including, without limitation, any Neighborhood Association. Notwithstanding the provisions of this Declaration, the extent of any lien of the Association shall be subject to such provisions as are established at law or in equity, including such limitations as are established and imposed by A.R.S. §33-1807 or any successor statute.

**8.2 Regular Assessments.** Subject to the terms of this Section 8.2, the Association by and through the Board shall determine and levy the Regular Assessments for the purposes set forth in this Declaration. The Regular Assessments levied by the Association shall be used to accomplish the duties and purposes of the Association within the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Area, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. The Regular Assessments shall take into account the Common Expenses of the Association benefiting all Lots and Parcels. Regular Assessments shall commence when Common Area tracts are conveyed to the Association.

**8.2.1** At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, that may include any surplus to be applied from prior years, any income expected from sources other than Assessments and the amount to be generated through Assessments against the Lots. Based on the budget adopted by the Board, the Board shall assess against each Lot a Regular Assessment. The Regular Assessment shall be the same for each Lot. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by Arizona law.

**8.2.2** The Board shall give notice of the Regular Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Regular Assessment established by the Board nor relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and a Regular Assessment is levied by the Board for such Assessment Period, the amount of the Regular Assessment for the immediately preceding Assessment Period shall remain in effect. Unless approval or ratification of the budget or the Regular Assessment for any Assessment Period is required by law, neither the budget nor the Regular Assessment shall be required to be ratified or approved by the Members.

**8.2.3** If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, the Board may amend the budget and increase the Regular Assessment for that Assessment Period and the revised Regular Assessment shall commence on the date designated by the Board.

**8.3 Assessment Period.** Except as otherwise provided in this Declaration, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period to monthly or quarterly assessments, or to any other assessments deemed appropriate by the Board. Assessments shall commence upon when Common Area tracts are conveyed to the Association. The Regular Assessments shall be prorated for the initial Assessment Period.

If any installment permitted for the payment of Assessments is not paid when due, the Board, at its option, may accelerate the entire Regular Assessment or other Assessment. Late fees and interest may be added to the Delinquent Amount of any Assessment, as provided herein, and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by Applicable Law. Delinquent payments shall, to the extent permitted by Applicable Law, apply first to the principal amount of any delinquent Assessments, then to accrued interest, and then to late fees and other sums due. The Owner shall also be liable for attorneys' fees and legal costs, including litigation related expenses and expert witness fees, if any. Attorneys' fees and costs incurred shall to the extent permitted by Applicable Law be deemed a part of the delinquent Assessment, and shall be secured by the lien therefor.

**8.4 Association's Rights in Spending Funds from Year to Year.** The Association shall not be obligated to spend in any year all monies received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Regular Assessment in the succeeding year if a surplus exists from a prior year. The Association shall be under no obligation to refund any surplus balance, and may transfer surpluses to the reserve account or any other account at the Board's discretion.

**8.5 Rate of Assessment.** The amount of the Regular Assessments, Benefited Assessments, and Special Assessments shall be established by the Board, in its sole discretion.

**8.5.1      Regular Assessment.** In establishing its budget and creating its plan for Assessments each year, the Board shall first establish a Regular Assessment per Lot payable for each Lot (the “**Regular Assessment**”).

**8.5.2      Single Family Parcel.** In the case of a Single Family Parcel that has not been subdivided into Lots, the Regular Assessment shall be three times what the Regular Assessment per Lot would be for each Acre in the Parcel.

**8.6      Obligations of Declarant and Developer Owners.**

**8.6.1      Shortfall Payment.** Declarant and the Developer Owner(s) shall pay, for any given Assessment Period, their proportionate share of the actual shortfall or deficiency, if any, in ordinary operating revenue necessary to pay current ordinary expenses for the operation and maintenance of the Association and the Common Area, including, without limitation, reasonable reserves (the “**Shortfall**”). A Shortfall shall exist only if current ordinary and budgeted expenses of the Association, including reasonable reserves, are greater than the revenues of the Association from all sources for the Assessment Period in question. In the event of a Shortfall, Declarant and each Developer Owner shall share the burden of payment of the Shortfall by paying its proportionate share of the Shortfall attributable to the Lots or Parcels owned by Declarant and each Developer Owner. Declarant and each Developer Owner’s proportionate share shall be determined by multiplying the Shortfall by a fraction, the numerator of which is the number of Lots and Parcels (multiplied by 3 for an assumed 3 Lots per Parcel) owned by Declarant or each Developer Owner and the denominator of which is the sum of the number of Lots and Parcels ((multiplied by 3 for an assumed 3 Lots per Parcel) owned by Declarant and all Developer Owners during the period attributable to the Shortfall. For illustration purposes only, if there are 100 Lots and 3 Parcels of 10 Acres each owned by Declarant and each Developer Owners in the Project, and a Developer Owner owns 10 Lots and 2 Parcels, such Developer Owner’s share of the Shortfall will be 10 Lots plus an assumed 3 Lots per Acre in each Parcel ( $10 \text{ Lots} + 2 \text{ Parcels} * 10 \text{ Acres} * 3 \text{ Lots} = 70$ ), divided by the total number of Lots and Parcels owned by Declarant and each Developer Owners ( $100 \text{ Lots} + 3 \text{ Parcels} * 10 \text{ Acres} * 3 \text{ Lots} = 190$ ), or  $70/190$ .

**8.6.2      Method of Payment.** Any amounts payable by a Developer Owner under this Section shall be paid as and when determined by Declarant, which may be based on the actual or estimated Shortfall. If a Developer Owner is paying its proportionate share of the Shortfall based on a budget estimate and the Developer Owner’s share of the actual Shortfall exceeds the estimate, Developer Owner shall pay the excess within thirty (30) days following receipt of an invoice therefor. If a Developer Owner is paying its proportionate share of the Shortfall based on a budget estimate and the estimate exceeds Developer Owner’s share of the actual Shortfall, Developer Owner shall receive a credit against the next Regular Assessment (or portion thereof) or Shortfall payments payable by the Developer Owner.

**8.6.3      Limitation to Shortfall Payment.** Notwithstanding any provision to the contrary in Section 8.6, in no event shall Declarant or any Developer Owner be obligated to make a Shortfall payment in excess of the Regular Assessment for the given Assessment Period, multiplied by the number of Parcels or Lots, owned by Declarant or such Developer Owner.

**8.7 Special Assessments**. In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of:

**8.7.1** Repairing damage to Improvements to Common Area caused by extraordinary or unforeseen events;

**8.7.2** Constructing new Improvements to Common Area following Declarant Control Period; or

**8.7.3** Defraying other extraordinary expenses or paying other expenses the Board may deem appropriate following Declarant Control Period, including increased expenses encountered by the Association in connection with new or expanded Common Area amenities or features, including such amenities or features within Annexable Property.

The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Prior to expiration of Declarant Control Period, Special Assessments shall be approved by Declarant. Following the expiration of Declarant Control Period, Special Assessments shall be approved by the written consent of, or vote at any annual or special meeting of, Voting Members representing a majority of all votes allocable to Lots and Parcels.

**8.8 Benefited Assessments**. The Board may levy Benefited Assessments against a Lot or particular Lots for expenses incurred or to be incurred by the Association, as follows:

**8.8.1** To cover the costs of maintenance of easements and property that benefit certain Lots or Parcels but not all of the Covered Property;

**8.8.2** To cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot, or groups of Lots, Parcel, or groups of Parcels, or Occupants thereof upon request of the Owner pursuant to a menu of special services that the Board may from time to time authorize to be offered to Owners (that might include, without limitation, landscape maintenance, caretaker service, etc.), which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner;

**8.8.3** To cover costs and expenses (including attorneys' fees) incurred in bringing the Lot or Parcel into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot or Parcel, their families, invitees, or guests;

**8.8.4** To cover costs and expenses (including attorneys' fees) incurred as a result of the willful or negligent act or omission of any Owner or Occupant (or of any other Person for whom such Owner is legally responsible under Applicable Law); or

**8.8.5** To cover costs and expenses (including attorneys' fees) incurred as a result of any use of, or activity on, any Lot or Parcel that causes maintenance or repair costs incurred or to be incurred by the Association with respect to Common Area to be substantially

greater than those costs that would typically be incurred in relation to such Common Area, whether such use or activity is of a continuing nature or an isolated event.

This Section shall be subject to such limitations as are imposed by A.R.S. §33-1807 or any successor statute.

**8.9 Fines and Penalties.** If any Owner or Occupant, or any family member, licensee, guest or invitee, or lessee violates provisions of the Governing Documents, the Board after providing the Owner with notice of the violation and an opportunity for a hearing as required by Applicable Law, may levy a fine upon the Owner, may suspend the violator's right to use the recreational portions of the Common Area and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including attorneys' fees and costs incurred. Such a violation shall also be grounds for the Association, should it wish, to suspend the rights of the Owner or Occupant and their family members, guests and invitees.

In no event shall any fine be imposed for a default or violation of the Governing Documents, other than a failure to pay Assessments, without first affording the Owner notice and an opportunity for a hearing. The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner may be collected as provided by Applicable Law.

This Section shall be subject to such limitations as are imposed by A.R.S. § 33-1807 or any successor statute.

**8.10 Billing and Collection Procedures.** The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments and Special Use Fees. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Parcel changes during an Assessment Period. Any successor Owner shall be given credit for any prepayments made by a prior Owner.

**8.11 Collection Costs and Interest on Delinquent Amounts.** Any Delinquent Amount shall have added thereto a late charge of the greater of \$15.00 or 10% of the Delinquent Amount if such Delinquent Amount is not paid within fifteen days after the due date and on the same day of each month thereafter until paid in full. Any Delinquent Amount shall bear simple interest from its due date until paid at a rate equal to the greater of 12% per annum, the then prevailing interest rate on loans insured by FHA or VA, or such rate as is determined from time to time by the Board. The Owner shall be liable for all costs, including but not limited to attorneys' fees and collection agency fees, that may be incurred by the Association in collecting any Delinquent Amount, and such amounts, to the extent permitted by law, shall be deemed a part of the Assessment Lien. This Section shall be subject to such limitations as are imposed by A.R.S. §33-1807, or any successor statute.

## **8.12 Assessments Upon Transfer.**

**8.12.1 Working Capital Fund Assessment.** To help ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, but subject to the limitations set forth in Section 1.68, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of a Lot a Working Capital Fund Assessment. A Working Capital Fund Assessment shall continue to be payable upon each subsequent sale of a Lot. Working Capital Fund Assessments may be used by the Association for payment of operating expenses or any other purpose permitted under the Governing Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration. No Working Capital Fund Assessment shall apply to or be payable on account of any Parcel.

**8.12.2 Reserve Fund Assessment.** To help ensure that the Association shall have adequate funds reserved for repair and replacement of the Improvements within the Common Areas, but subject to the limitations set forth in Section 1.57, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a Reserve Fund Assessment. A Reserve Fund Assessment shall continue to be payable upon each subsequent sale of a Lot. Payments made pursuant to this Section 8.12.2 shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. No Reserve Fund Assessment shall apply to or be payable on account of any Parcel.

**8.12.3 Administrative Fee.** Upon each transfer of title to a Lot, the new Owner shall pay to the Association or to its managing agent, if directed to do so by the Board, immediately upon becoming the Owner of the Lot, an Administrative Fee in such amount as is established from time to time by the Board, not to exceed that amount permitted by law, to cover administrative costs of incurred in the preparation of a statement or other documents furnished by the Association pursuant for purposes of resale disclosure.

**8.12.4 Exempt Transfers.** Notwithstanding the above, no Working Capital Fund Assessment, Reserve Fund Assessment, or Administrative Fee shall be levied upon an Exempt Transfer.

**8.12.5 Notice of Transfer.** Each Owner shall notify the Association of a pending title transfer at least ten (10) days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and such other information as the Board may reasonably require.

**8.13 Exempt Property.** Exempt Property shall be exempt from Assessments and the Assessment Lien, and shall have no voting rights in the Association; provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Assessments (prorated as of the date it ceased to be Exempt Property) and the Assessment Lien, and shall have voting rights in the Association as otherwise determined in this Declaration.

**8.14 Declarant's and Developer Owner's Exemption.** Anything in this Declaration to the contrary notwithstanding, Declarant and Developer Owners shall not be liable for, nor

shall Declarant and Developer Owners be required to pay, Assessments of any nature for Lots or Parcels owned by Declarant and each Developer Owner, except for payment of Declarant's and Developer Owner's share of the Shortfall pursuant to Section 8.6.1 and the Administrative Fee. Declarant and each Developer Owner shall not be liable for the payment of any Assessments for any Lot or Parcel that, having been previously sold to a purchaser, has been deeded back to Declarant or such Developer Owner by an Event of Foreclosure.

## ARTICLE 9

### ENFORCEMENT OF THE ASSESSMENT LIEN

**9.1 Association Remedies to Enforce Assessments.** If any Owner fails to pay any Assessment when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking any and all action available at law or in equity, including:

**9.1.1** Bringing an action against the Owner to recover judgment against the Owner who is personally liable for the Assessments or Special Use Fees; and

**9.1.2** Foreclosing the Assessment Lien against the appropriate Lot or Parcel in accordance with then prevailing Arizona law. Though not required, the Association may Record notice of its lien, and all costs of preparation of such notice, Recording and releasing same, including attorneys' fees and costs, shall be paid by the delinquent Owner, with all expense thereof being a part of the Assessment Lien.

**9.2 Subordination of Assessment Lien.** The Assessment Lien shall have priority from the date of Recording of this Declaration, and shall be superior to all charges, liens or encumbrances that hereafter are or may be imposed on any Lot or Parcel, except as provided by Applicable Law. Without limitation, the Assessment Lien shall be junior to:

**9.2.1** The lien of any First Mortgage encumbering a Lot or Parcel as provided for in A.R.S. § 33-1807(B)(2) or any successor statute; and

**9.2.2** The lien for taxes or other governmental assessments that are deemed superior hereto by Applicable Law.

Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, the sale or transfer of any Lot or Parcel pursuant to any Event of Foreclosure, shall extinguish the Assessment Lien as to payments that became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Parcel, or the Owner thereof, for liability from any Assessment becoming due prior to such transfer nor from the Assessment Lien arising in regard thereto. No Event of Foreclosure shall relieve the Owner whose interest was foreclosed from liability for Assessments payable through the date of such Event of Foreclosure.

In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a First Mortgagee obtaining an interest in a Lot through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

This Section shall be subject to such limitations as are imposed by A.R.S. § 33-1807 or any successor statute.

## ARTICLE 10

### MAINTENANCE

#### **10.1 Common Area and Public Rights-of-Way.**

**10.1.1 Areas of Association Responsibility.** The Association, or its duly delegated representative, shall maintain and otherwise manage the Common Area. Common Area to be maintained by the Association may be identified on Recorded subdivision Plats approved by Declarant, or in a Tract Declaration or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto. A Tract Declaration or a separate instrument approved by Declarant may limit the Association's responsibilities with respect to certain Common Area.

The Association may, but shall not be obligated to, assume maintenance responsibility for property within any Neighborhood, in addition to any property that the Association is obligated to maintain pursuant to this Declaration or any Tract Declaration. Such responsibility shall be assumed either by agreement with the Neighborhood Association or because, in the judgment of the Board, the level and quality of service then being provided by the Neighborhood Association is not consistent with the Community-Wide Standard. All costs of such maintenance shall be assessed as a Benefited Assessment against the Lots within the Neighborhood for which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association, or its duly delegated representative, shall be responsible for the obligations of the "Grantor" under that certain Monument Sign Easement Agreement dated and Recorded concurrently herewith, which shall include, without limitation, operating, illuminating, maintaining, repairing and/or replacing the monument sign as required therein.

**10.1.2 Rights of Way.** The Association may also in its discretion elect to maintain landscaping and similar Improvements within public rights of way located within the Covered Property to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity with respect to such public rights of way.

**10.1.3 Standard of Care.** The Association shall use a reasonable standard of care in providing for the repair, management and maintenance of the Common Area and any public rights of way for which the Association assumes responsibility so that the Covered Property will reflect a high degree of pride of ownership. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Area and applicable public rights of way.

**10.2 Duty of Maintenance.** Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot or Parcel, including buildings, Improvements, private drives, easement areas and grounds thereon, in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances,

regulations and requirements. Each Owner shall be responsible for the maintenance and repair of all utility lines, including sewer, located within such Owner's Lot or Parcel, and such maintenance obligation shall include maintenance and repair beyond the Lot or Parcel boundary to the point of service line connection or junction in the adjacent street, Common Area or easement area.

No Improvement on any Lot or Parcel shall be permitted to fall into disrepair and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the Improvement. In the event any Improvement is damaged or destroyed, then, subject to approval in accordance with Article IV, such Improvement shall be immediately repaired, rebuilt or demolished by the Owner.

If any Owner fails to perform any necessary maintenance or make any necessary repairs, after receiving notice from the Board of the requirement to perform such maintenance or repairs within the time limits established by the Board, the Board and its agents and representatives shall have the right, but not the obligation, to enter on the Lot or Parcel and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected as a Benefited Assessments. Any such entry shall be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

**10.3 Maintenance of Landscaping and Driveways**. Unless otherwise provided in a Tract Declaration or other Recorded document, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

**10.3.1** On the Owner's Lot or Parcel (including set back areas), except that in the event the maintenance of any portions of such Owner's Lot or Parcel is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility;

**10.3.2** Portions of the Common Area adjacent to an Owner's Lot or Parcel and that are on the Lot's or Parcel's side of any wall erected on the Common Area; and

**10.3.3** Public right-of-way area, between sidewalks and the street curbs on the Owner's Lot or Parcel, or other public or easement areas adjacent to the Owner's Lot or Parcel, except that in the event the maintenance of such areas is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

As used herein, maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly materials. All lawn areas shall be timely mowed as needed to keep an even, well-groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds.

All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as

required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately.

All bed areas shall be kept free of weeds and cultivated periodically as needed. No area shall be over watered so as to create a risk of damage to nearby structures or Improvements. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways and parking areas, located on the Owner's Lot or Parcel.

Any Owner who fails to properly maintain the landscaping upon the Lot or Parcel shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot or Parcel after receiving notice from the Board to do so, and after such hearing and notice as may be required by Applicable Law, the Association shall have the right, but not the obligation, to enter upon the Lot or Parcel, to conduct the necessary landscaping maintenance, and to charge the cost to the Owner. Such charges shall be collected as Benefited Assessments.

Each Owner acknowledges that the Association or the Board may require that each Owner, or Owners of portions of the Covered Property, install landscaping on such Owner's Lots or Parcel, within a specified period of time after acquiring title thereto, if landscaping was not installed by the builder or Developer Owner at the time of such acquisition. Such obligation may include trees, plants or other landscaping Improvements (together with an irrigation system sufficient to adequately water the trees, plants or other landscaping Improvements).

**10.4 Neighborhood's Responsibility.** The Association may require the Owners of Lots within a Neighborhood to be responsible for paying, through Benefited Assessments, the costs of operating, maintaining and insuring certain portions of the Common Area within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining, any signage, entry features, right-of-way, and open space between the Lots within the Neighborhood and adjacent public roads and private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may previously have been performed by the Neighborhood Association; provided, however, all Neighborhoods that are similarly situated shall be treated the same. As an alternative, the Board may resolve that such maintenance shall be performed by the applicable Neighborhood Association, if any.

All maintenance required of a Neighborhood Association under this Declaration or any additional covenants or agreements shall be performed consistent with the Community-Wide Standard. If any Neighborhood Association fails to perform such maintenance, the Association may do so and assess the costs against all Lots within such Neighborhood as provided in Section 8.8.

**10.5 Security.** The Association, or its duly delegated representative, may, at its option, operate a security system for the Covered Property as follows:

**10.5.1 General Security.** The security system may (but is not required to) include unmanned guard gates and other security points at entries to various portions of the Covered Property or Common Area; patrol vehicles, patrolmen and security supervisors; computer and/or other monitoring equipment; television monitoring devices; burglar and fire

alarm devices installed in buildings located on Common Areas and private right-of-ways; communication equipment; direct line phones; and such other security protection devices as may be deemed appropriate by Declarant, and after the expiration of Declarant Control Period, the Board. The cost of any such security shall be part of the Common Expenses.

**10.5.2 Right of Entry.** Representatives and agents of the Association, including, but not limited to, security patrolmen, shall have the right to enter upon all Lots, Parcels, and Common Areas when responding to alarms or when otherwise reasonably deemed necessary for the protection of individuals or property (but without any obligation to do so), and neither the Association, nor any of its representatives or agents, shall be guilty of trespass or have any liability to any person when acting in good faith in effecting that entry.

**10.5.3 Liability for Security.** Neither the Association nor Declarant is or should be considered a guarantor or insurer of security in the Covered Property or in any Neighborhood, Lots or Parcels. Neither the Association, nor Declarant, nor any committee, officer, director, partner, member, shareholder or agent of any of them, shall be liable to any Owner, Occupant or other Person if any security (or similar) system is ineffective to prevent or detect in any case the risk for which it is intended. Moreover, no approval of a security or access control system for a Lot or Parcel by the Board shall constitute a warranty or assurance of any kind by the Board, nor Declarant, that the system will function as intended and neither the Board (nor any member or agent of either), nor Declarant, nor any Developer Owner shall have any liability by reason of such an approval if any system fails to prevent or detect the risk for which it is intended.

## ARTICLE 11

### RIGHTS AND POWERS OF ASSOCIATION

**11.1 Rights, Powers and Duties of the Association.** In addition to the rights and powers of the Association set forth in the Governing Documents, the Association shall have such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Governing Documents shall be available for inspection at the office of the Association or, if applicable, any managing agent retained by the Association, during normal business hours.

**11.2 Association's Rights of Enforcement.** The Association shall have the right, but not the obligation, to enforce the provisions of this Declaration and all Tract Declarations that shall have been executed pursuant to or subject to the provisions of this Declaration. If the Association shall fail or refuse to enforce the provisions of this Declaration or any Tract Declaration after receipt of written request to enforce from any Owner, then any Owner shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration or any Tract Declaration.

**11.3 Enforcement Methods and Means.** The Association, to the extent permitted by Applicable Law, may enforce the provisions hereof at law or in equity, including, but not limited to:

**11.3.1** Imposing reasonable monetary penalties after affording an Owner notice and an opportunity for a hearing, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her family members, guests, invitees and Occupants;

**11.3.2** Suspending an Owner's right to vote after affording such Owner notice and an opportunity for a hearing;

**11.3.3** Suspending any services provided by the Association to an Owner or the Owner's property, or access to any amenities or facilities in the Common Area, or if the Owner is more than fifteen (15) days delinquent in paying any Assessment or other charge owed to the Association;

**11.3.4** Exercising self-help or taking action to abate any violation of the provisions hereof;

**11.3.5** Requiring an Owner at the Owner's expense to remove any offending condition, structure or Improvement on the Owner's Lot or Parcel after affording the Owner notice and an opportunity for a hearing, and further requiring such Owner to restore his or her Lot or Parcel to the condition in which it previously existed, without such action being a trespass;

**11.3.6** Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration or any Tract Declaration from continuing to perform and further activities on the Covered Property;

**11.3.7** Towing vehicles that are parked in violation of the provisions hereof; and

**11.3.8** Filing suit at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate.

The Board may weigh financial and other factors, such as possible defenses, legal merit and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to take legal action shall not limit or waive the right of any Owner to pursue proper action, nor the right of the Association to pursue action at a future time should it so desire.

**11.4 Contracts with Others; Bulk Service Agreements.** Subject to the restrictions and limitations contained in the Governing Documents and any Applicable Laws, the Association may enter into contracts with others, including Declarant and Declarant Affiliates, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant Affiliates; provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract shall be fair and reasonable. Notwithstanding the foregoing, any

contract entered into by the Association shall be for a term not exceeding the maximum term permitted by Applicable Law.

The Association may, without limitation, provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense and payable as part of the Regular Assessment or may be funded as otherwise determined by the Board in accordance with this Declaration. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities that may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. If all Lots within the Covered Property are to be served by a particular bulk service agreement, the Board shall have the option either to (a) include the Association's costs under such bulk service agreement in the budget for each applicable fiscal year and thereby include such costs in the Regular Assessments for each applicable year, or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly). 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.

**11.5 Change of Use or Conveyance of Common Area.** Declarant and the Association shall have broad rights to convey and resubdivide Common Area, including as set forth in Section 3.1 and elsewhere herein. In addition, and without limitation, after expiration of Declarant Control Period, Common Area may be conveyed or the use thereof changed as follows:

**11.5.1 Resolution of Board.** The Association, upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Area is no longer in the best interests of the Owners and Occupants, and upon the approval (which may be by written consent) of such resolution by Voting Members representing at least 2/3rds of the votes allocable to Lots and Parcels within the Covered Property (including Class B votes), and Declarant so long as Declarant is a Member of the Association, the Board shall have the power and right to change the use of Common Area (and in connection therewith to take whatever actions are required to accommodate the new use). The foregoing provisions shall not apply to minor or insignificant changes in use, such as, but not limited to, adjustments of fence lines or boundary walls, expansions or relocations of private streets, and the like, and such matters may be approved by the Board, with the approval of the Class B Member so long as such Membership exists.

**11.5.2 Dedications.** The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public authority, utility or public service corporation without the approval of the Members, and without a vote or meeting of Members. In addition, the Association may make such other dedications, provided that:

- (a) The Board in its sole discretion determines that such a transfer or dedication does not have a material and substantial adverse effect on the enjoyment of the remaining Common Area by the Owners and Occupants; and
- (b) Such transfer shall be approved by Class B Member so long as such Membership exists.

**11.6 Powers of the Association Relating to Neighborhood Associations.** No action of any Neighborhood Association shall become effective or be implemented until and unless the Association and, during Declarant Control Period, Declarant shall have been given written notice of such proposed action and shall not have exercised their right to disapprove of the proposed action. The Association and, if applicable, Declarant shall have ten (10) business days from receipt of the notice to disapprove any proposed action. The Association may disapprove any action taken or contemplated by any Neighborhood Association that the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. Until the expiration of Declarant Control Period, Declarant also shall have the right to disapprove actions of any Neighborhood Association.

The Association may require specific action to be taken by any Neighborhood Association to fulfill its obligations and responsibilities under this Declaration or any other applicable covenants. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association, and (b) require that a proposed Neighborhood budget include the cost of such work. Any action to be taken by a Neighborhood Association shall be specified in a written notice from the Association specifying the time period within which the action must be completed. If the Neighborhood Association fails to comply with the requirements set such notice within the specified time period, the Association shall have the right, but not the obligation, to effect such action on behalf of the Neighborhood Association, in which event the Association may assess the Lots in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action. Such assessments shall be Benefited Assessments as described in Section 8.8 and shall be subject to all collection and lien rights provided in Article IX.

## **ARTICLE 12**

### **EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA**

**12.1 Eminent Domain.** In the event of a threatened taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the taking and

shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Any awards received on account of the taking shall be paid to the Association. The Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, (taking into account a reduction in the distribution to those Owners paying reduced amounts for Assessments pursuant thereto), and all holders of liens and encumbrances, as their interest may appear of record.

The term “**taking**” as used in this Section means condemnation by eminent domain or sale under threat of condemnation.

**12.2 Authority to Purchase Insurance.** The Association shall as a Common Expense purchase and maintain such property damage and liability insurance upon the Common Area and such other insurance as the Board, in its absolute discretion, shall determine. Without limiting the provisions of the preceding sentence, the Association shall maintain as a Common Expense the following: (i) property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement cost of the Common Area, 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 property policy; (ii) commercial general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00, which 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 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; (iii) worker’s compensation insurance to the extent necessary to meet the requirements of the laws of Arizona; and (iv) if the Covered Property is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of 100% of the current replacement cost of the buildings and any other property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended. The Association shall be the named insured in all policies providing such insurance. Without limitation, the Association may also consider all other forms of insurance and endorsements thereto, including replacement value coverage, floodplain coverage, fidelity protection, workers compensation coverage for employees, if any, and all forms of accident, personal injury and property damage insurance, including, if appropriate, waivers of subrogation and non-contribution endorsements. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions or the Board, in the exercise of its reasonable judgment, decides not to purchase such other forms of insurance.

Without limiting the provisions of the preceding paragraph, the Association shall obtain and maintain at all times, as a Common Expense, directors' and officers' liability insurance covering all officers and directors of the Association as well as Declarant, Declarant Affiliates and, to the extent such insurance is reasonably available, any managing agent under contract with the Association, all in amounts and on terms adequate to permit the Association to indemnify such Persons pursuant to the provisions hereof and pursuant to the provisions of the Articles and Bylaws. Neither the Association, any Board member, Declarant, any Declarant Affiliate, nor any managing agent shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

**12.3 Individual Responsibility.** It shall be the responsibility of each Owner or Occupant to provide insurance for real or personal property or interests owned or held by such Owners within the Covered Property, including, but not limited to, homeowners insurance, hazard, fire and casualty insurance, liability insurance, and property damage insurance covering all additions and Improvements to Lots or Parcels, furnishings and personal property therein, and personal liability.

Each Owner and Occupant shall also provide such other insurance that is not carried by the Association as such Person desires. No Person shall maintain any insurance that would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association or any Neighborhood Association in the event of damage to the Improvements or fixtures on the Common Area. Neither the Association, nor any Neighborhood Association, nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or any Neighborhood Association or if the amount of such insurance is not adequate.

**12.4 Insurance Claims.** The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association covering Common Area and Improvements thereon, property or interests of the Association, liability of the Association, and other such insurance. Each Owner shall execute and deliver releases upon the payment of claims, and do all other acts reasonably necessary to accomplish such appointment. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

Any Owner who causes any damage or destruction of any areas for which the Association maintains insurance is responsible for the payment of any deductible portion of the insurance, that will become a Benefited Assessment against the Owner and the Lot or Parcel.

## ARTICLE 13

### DISPUTE RESOLUTION

**13.1 Approval of Litigation.** Except for any legal proceedings initiated by the Association to: (i) enforce the Use Restrictions; (ii) enforce the Association Rules; (iii) to enforce Master Plan Administration Agreement and any design guidelines established

thereunder; (iv) collect any unpaid Assessments levied pursuant to this Declaration; or (v) collect any "small claims" (i.e., matters in which the amount in controversy related to such claim and all their similar or related claims is eligible to be heard in a "small claims division" of court in accordance with A.R.S. § 22-501, et seq.) (items described in clauses (i) through (v) immediately above, collectively, "**Routine Disputes**"), the Association shall not incur litigation expenses, including, without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or third-party claims or is joined as a plaintiff in legal proceedings, without the prior approval of Declarant (for so long as it is a Class B Member) or thereafter with the prior approval of at least two-thirds ( $\frac{2}{3}$ ) of the Members of the Association entitled to vote, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds or other reserves, or use monies collected for other specific Association obligations. Each Owner shall notify prospective purchasers of such legal proceedings initiated by the Board and not included in the above exceptions and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 13.5 of this Declaration. Nothing in this Section 13.1 shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to: (a) enforce the Governing Documents; (b) comply with the statutes or regulations related to the operation of the Association or the Common Area; (c) amend the Governing Documents as provided in this Declaration and/or therein; (d) grant easements or convey Common Area as provided in this Declaration; (e) or perform the obligations of the Association as provided in this Declaration, or (f) prosecute or defend Routine Disputes.

Notwithstanding anything herein to the contrary, this Section 13.1 may not be modified or amended without the prior vote and approval of two-thirds ( $\frac{2}{3}$ ) of the members of the Association entitled to vote and the prior written approval of Declarant for so long as it is a Class B Member or expiration of the statute of repose under A.R.S. § 12-552 (whichever occurs later). It is intended that the Common Area, each Lot, each Residence and all improvements constructed on the Covered Property will be constructed in substantial compliance with all applicable building codes and ordinances and/or in a manner reasonably believed by Declarant as to the Common Area and each Developer Owners as to the Residences not to be objectionable to local building authorities and that all improvements will be of a quality that is consistent with reasonably good construction and development practices in the area where the Covered Property is located. It is acknowledged that the Common Area will be built in accordance with its "as-built" plans and specifications and not necessarily in accordance with plans and specifications initially provided to any applicable governmental agency. Each Owner by accepting a deed to any portion of the Covered Property acknowledges that certain decisions are made "in the field" or other items are made and choices are undertaken in good faith by Declarant and its contractors and variation between the "as-built" plans and applicable governmental agency-approved plans will not be or give rise to a cause of an Alleged Defect unless said Alleged Defect is not otherwise a reasonable construction practice or is not in violation of zoning or applicable governmental agency code. 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 acknowledged that the Common Area will be built in accordance with its "as-built" plans and specifications and not necessarily in accordance with plans and specifications initially provided to any applicable governmental agency. Each Owner

by accepting a deed to a Lot on which a Residence is located acknowledges that certain decisions are made "in the field" or other items are made and choices are undertaken in good faith by Developer Owners and their contractors and variation between the "as-built" plans and applicable governmental agency-approved plans will not be or give rise to a cause of an Alleged Defect unless said Alleged Defect is not otherwise a reasonable construction practice or is not in violation of zoning or applicable governmental agency code. It is agreed that all disputes and claims regarding Alleged Defects will be resolved amicably, without litigation. Accordingly, Declarant, Developer Owners, the Association, the Board, and all Owners shall be bound by the following claim resolution procedures.

**13.2 Right to Cure Alleged Defect.** The Association or any Owner who contends or alleges to have a Claim (a "Claimant") against any Declarant Party as to the Common Area or any Developer Owner Party as to a Residence shall notify each applicable Declarant Party or Developer Owner Party (a "Respondent"). If a Claimant claims, contends, or alleges an Alleged Defect in accordance with this Declaration, the applicable Respondent shall have the right to inspect, repair, replace or pay diminution in value for such Alleged Defect as set forth herein. It is expressly acknowledged by each Owner that Declarant shall have no responsibility with regard to any Alleged Defects claimed as to any Residences and that Developer Owners shall have no responsibility for any Alleged Defects in the Common Area. It is provided, however, that to the extent provided by law, Declarant or each Developer Owner, as applicable, shall have such additional periods and/or rights to cure as may be afforded or Developer Owner, as applicable, in such law from time to time in addition to, and not a limitation of, other enumerated rights of Declarant or each Developer Owner hereunder.

**13.2.1 Notice of Alleged Defect.** As a precondition to a Claimant having any rights hereunder, the Notice of the Alleged Defect must be issued within two (2) years after substantial completion of the improvement or acceptance of maintenance, whichever occurs first for the area where the Alleged Defect originated.

**13.2.2 Right to Inspect and Repair, Replace, or pay Diminution Damages.** After receipt of the Notice of Alleged Defect, the Respondent, as applicable, may inspect the subject property to determine the nature and cause of the Alleged Defect and the nature and extent of any repairs or replacements necessary to remedy the Alleged Defects. The Claimant shall ensure that the Residence is made available for inspection no later than ten (10) days after the Claimant receives the Developer Owner's request for an inspection. The Respondent, as the case may be, may use reasonable measures, including testing, to determine the nature and cause of the Alleged Defects and the nature and extent of any repairs or replacements necessary to remedy the Alleged Defects.

(a) Within sixty (60) days after receipt of the Notice of Alleged Defect, the applicable Respondent, shall send to the Claimant a good faith written response to the Notice of Alleged Defect. In the Respondent's sole and unfettered discretion, the response may include the Respondent's notice of intent to (1) repair or replace any or all of the Alleged Defects, (2) have any or all of the Alleged Defects repaired or replaced at the Respondent's expense or, or (3) provide monetary compensation for the Alleged Defects. The written notice of intent to repair or replace shall describe in reasonable detail all repairs or replacements that the Respondent intends to make or provide and an estimate of the date by which the repairs or

replacements will be made. Alternatively, the Respondent may offer monetary compensation or other consideration instead of or in addition to a repair or replacement. The Claimant may accept or reject an offer of monetary compensation or other consideration, other than repair or replacement and, if rejected, may pursue Alternative Dispute Resolution under Section 13.6 of this Declaration after completion of any repairs or replacements the Respondent intends to make or provide. If the Respondent does not submit a written response within sixty (60) days after receiving the Notice of Alleged Defect, Alternative Dispute Resolution may be pursued under this Article XIII. The Claimant and the applicable Respondent may negotiate for a release if an offer involving monetary compensation or other consideration is accepted. Any warranties impliedly given shall be deemed given from the respective dates that any such improvement was originally completed and no warranty shall be deemed extended by virtue of any repairs or replacements undertaken by Respondent.

(b) If the Respondent's response states an intent to repair or replace the Alleged Defects, the Respondent will be allowed a reasonable opportunity to repair or replace the construction defects or cause the construction defects to be repaired or replaced pursuant to the following:

(i) Both Claimant and the applicable Respondent, which may include the Respondent's construction professionals, shall coordinate to commence repairs or replacements within sixty (60) days after the Respondent's notice of repair or replace was sent.

(ii) If a permit is required to perform the repair or replacement, reasonable efforts shall be made to begin repairs or replacements within ten (10) days after receipt of the permit or sixty (60) days after the Respondent's notice of intent to repair or replace was sent pursuant to this section, whichever is later.

(iii) All repairs or replacements shall be completed using reasonable care under the circumstances and within a commercially reasonable time frame considering the nature of the repair or replacement, any access issues or unforeseen events that are not caused by the Respondent or the Respondent's construction professionals.

(iv) The Claimant shall provide reasonable access for the repairs or replacements.

(v) At the conclusion of any repairs or replacements, if the Claimant is dissatisfied with the repairs or replacements, Claimant may pursue Alternative Dispute Resolution under Section 13.6 of this Declaration and subject to all remedies, limitations, and waivers contained in this Article XIII.

**13.2.3 Assignment of Claims; Covenant not to Execute.** Declarant does not itself perform construction-related work but instead hires consultants, contractors, and other professionals ("Construction Professionals") to perform construction-related services. As such, Declarant shall have the right, in its sole discretion, to assign its rights against the Construction Professionals who performed work related to an Alleged Defect to the Claimant in lieu of repairing, replacing, or paying diminution damages under Section 13.2.2. If Declarant assigns its rights against Construction Professionals to a Claimant, then the Claimant shall accept that

assignment in lieu of pursuing any claims against the Declarant's or any Declarant Affiliates. Upon receiving an assignment of rights against Construction Professionals for an Alleged Defect, the Claimant will not pursue any claim or execute any judgment against Declarant or any Declarant Affiliate but will instead seek to execute solely against the assets of the Construction Professionals. Any assignment of rights against Construction Professionals shall relate solely to the Alleged Defect, and Declarant shall retain all other rights. Declarant makes no representation regarding the adequacy or effectiveness of an assignment of rights, and the Claimant's covenant not to execute against Declarant or Declarant Affiliates shall be effective regardless of whether the claims against the Construction Professionals are valid, collectible, or adequate to make the Claimant whole.

**13.3 No Additional Obligations; Irrevocability and Waiver of Right.** Nothing in this Declaration creates or implies a warranty, guarantee, or other duty regarding the Covered Property, Residence or any portion thereof. Nothing set forth in this Article XIII shall be construed to create or imply any duty, obligation or liability not otherwise existing in law or equity, nor shall it impose any duty or obligation on a Respondent to inspect, test, repair replace, or pay for any item or Alleged Defect for which Respondent is not otherwise obligated under applicable law. All warranties including merchantability, fitness or otherwise, whether express, implied, or statutory and whether regarding personal property, consumer goods, environmental conditions or actual construction (including without limitation, any implied warranty of workmanship or habitability) are expressly disclaimed and waived to the extent permitted by law. The right reserved to a Respondent to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to a Respondent except by a written document executed by the applicable Respondent. Without limiting the foregoing, Declarant has no duty or obligation whatsoever regarding any Alleged Defect, any lot or improvement transferred to an Owner from a Developer Owner. A Respondent's exercise of rights or its participation in any process identified in this Article XIII does not constitute a waiver of any defenses nor does it imply any rights for any Claimant.

**13.4 Limitation of Remedies.** Claimants' remedies are limited as stated in this Article XIII. Except as provided in this Article XIII, the Association, every Owner, and every other Claimant hereby waives the right to pursue an action against Declarant, Declarant Affiliates, each Developer, each Developer Owner and Developer Owner Party for any monetary damages of any nature, including, without limitation, actual, special, indirect, incidental, consequential, exemplary and punitive damages. To the extent Claimants are entitled to pursue a claim against Declarant or a Developer Owner for Alleged Defects under applicable law, Claimants shall only be entitled to seek remedies against Declarant or a Developer Owner for Alleged Defects that constitute a Material Deficiency. "**Material Deficiency**" means (i) as to a Developer Owner a deficiency that actually impairs the structural integrity, the functionality or the appearance of the subject property at the time of the claim, or is reasonably likely to actually impair the structural integrity, the functionality or the appearance of the Residence in the foreseeable future if not repaired or replaced, and (ii) as to Declarant, a deficiency that actually impairs the structural integrity, the functionality or the appearance of the subject property at the time of the claim, or is reasonably likely to actually impair the structural integrity, the functionality or the appearance of the Common Area in the foreseeable future if not repaired or replaced.

**13.5 Legal Action.** Pursuant to A.R.S. § 12-1362(A), all legal actions initiated by a Claimant shall be brought in strict accordance with, and expressly subject to, this Article XIII. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against Declarant or a Developer Owner alleging: (1) damages for Alleged Defect Costs; (2) the diminution in value of any real or personal property resulting from such Alleged Defect; or (3) any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserves. 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 Declarant, which notice shall include at a minimum: (1) a description of the Alleged Defect; (2) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Arizona that such Alleged Defect exists, along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the action against Declarant; and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

**13.6 Alternative Dispute Resolution.** Except for Routine Disputes, any dispute or claim between or among: (a) Declarant and Declarant Affiliates (or their brokers, agents, consultants, contractors, subcontractors, or employees), on the one hand, and any Owner(s) or the Association, on the other hand; (b) a Developer Owner and Developer Owner Parties (or their brokers, agents, consultants, contractors, subcontractors, or employees), on the one hand, and any Owner(s), on the other hand; (c) any Owner(s) and another Owner(s); or (d) the Association and any Owner, regarding any controversy or claim between the parties, including any claim based on contract, tort, equity, or statute, arising out of or relating to: (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of the Covered Property; or (iii) an Alleged Defect, but excluding, in all cases, Routine Disputes (collectively, "Dispute"), shall be subject to negotiation, mediation and arbitration as set forth in this Section 13.6 prior to any party to the Dispute instituting litigation with regard to the Dispute.

**13.6.1 Negotiation.** Each party to a Dispute shall 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 represent the Association 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 such negotiation. For

Disputes involving Alleged Defects to Common Areas, the parties shall comply with Section 13.2 in lieu of Negotiation under this Section 13.6.1.

**13.6.2 Mediation**. If the parties cannot resolve their Dispute pursuant to the procedures described in Section 13.6.1 above within such time period as may be agreed upon or if the parties cannot agree, sixty (60) days from the time the initiating party gives specific written notice to the other party(ies) of the existence and nature of the Dispute by such parties or within the time specified in Section 13.2 for claims involving Alleged Defects in Common Areas ("Termination of Negotiations"), the party instituting the Dispute ("Disputing Party") shall have thirty (30) days after the Termination of Negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute after full disclosure of the interest. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty (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 such Dispute provided, nothing in this Section 13.6.2 shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

(a) **Position Memoranda; Pre-Mediation Conference**. Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a premediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in Yavapai County or such other place as is 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 assume the expenses of obtaining such advice as provided in Section 13.6.2(e) below. The mediator shall not have the authority to impose a settlement on any party to the Dispute.

(c) **Exclusion of Settlement Discussions**. Any admissions, offers of compromise, or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum pursuant to A.R.S. § 12-2238.

(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 confidential as provided in A.R.S. § 12-2238. There shall be no stenographic or other record of the mediation process.

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

(f) **Termination of Mediation.** Because the mediation settlement process may continue past the mediation meeting, the mediation shall not be deemed to terminate until one of the following events occur:

- (i) The parties execute a binding written settlement agreement;
- (ii) The mediator declares the mediation terminated;
- (iii) The parties to the dispute agree in writing that the mediation is terminated;
- (iv) The passage of 14 consecutive days after the mediation during which no written negotiation are exchanged and no follow-up mediation date is scheduled.

**13.6.3 Final and Binding Arbitration.** If the parties cannot resolve their Dispute pursuant to the procedures described in Section 13.6.2 above, the Disputing Party shall have thirty (30) days following termination of the mediation proceedings to submit the Dispute to arbitration in accordance with the Commercial Arbitration Rules for Real Estate Disputes of the American Arbitration Association, as modified or as otherwise provided in this Section 13.6.3. If the Disputing Party does not submit the Dispute to arbitration within thirty (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 such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings. The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. Respondent shall not be required to participate in the arbitration proceeding if all parties against whom Respondent 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 13.6.3, the arbitrator shall have the authority to try all issues, whether of fact or law.

(a) **Place.** The arbitration proceedings shall be heard in Yavapai County.

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

(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.

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

(e) **Discovery.** The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including, but not limited to, destructive or invasive testing; and trial briefs. The applicable Respondent shall also be entitled to conduct further tests and inspections as provided in Section 13.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(f) **Scope of Arbitration for Alleged Defects.** For Disputes arising out of or related to Alleged Defects, the arbitrator's scope of inquiry shall be limited to determining whether an Alleged Defect constitutes Material Deficiency. If the Alleged Defect constitutes a Material Deficiency, then the arbitrator shall also identify the following three (3) items:

(i) The cost to repair the Alleged Defect caused by Respondent;

(ii) The extent to which the value of the Claimant's property is diminished by the Alleged Defect caused by Respondent, and

(iii) Out of pocket expenses reasonably incurred and actually paid by the Claimant to mitigate damages attributable to the Alleged Defect caused by the Respondent.

If Respondent is not the sole cause of the Alleged Defect, then the arbitrator shall reduce the three amounts identified above in proportion to the extent that the Respondent caused the Alleged Defect. After the arbitrator makes the findings identified in this Section 13.6.3(f), Respondent shall pay its portion of the out-of-pocket expenses reasonably incurred and actually paid by the Claimant to mitigate damages plus, in Respondent's sole option, pay (1) the Claimant for Respondent's portion of the cost to repair the Material Deficiency, or (2) the Claimant for the Respondent's portion of the diminution of value attributable to the Material Deficiency, or (3)

contractors to remedy the Material Deficiency. This payment will constitute the Claimant's sole remedy for the Alleged Defect. If Respondent fails to make an election within 10 days, then the Claimant shall have the right to affirm the arbitrator's ruling in court for Respondent's portion of out-of-pocket expenses reasonably incurred and actually paid by the Claimant to mitigate damages attributable to Material Deficiency plus the lesser of (1) Respondent's portion of the cost to repair the Material Deficiency, or (2) Respondent's portion of the diminution in value attributable to the Material Deficiency.

(g) **Limitation on Remedies/Prohibition on the Award of Punitive Damages.** Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages or attorneys' fees against a Respondent. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

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

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

**13.7 Waiver.** DECLARANT AND EACH DEVELOPER OWNER, ON ONE HAND, AND OWNER OR ASSOCIATION, ON THE OTHER, BY OWNER OR ASSOCIATION ACCEPTING A DEED FOR OR TO THE COMMON AREA OR A LOT, AS THE CASE MAY BE, AGREE TO HAVE ANY DISPUTE TO WHICH THIS ARTICLE XIII IS APPLICABLE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XIII AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE AND SUCH DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE SUCH DISPUTES AS PROVIDED IN THIS ARTICLE XIII, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A COURT OR JURY.

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

**13.9 Enforcement of Resolution.** If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Subsections 13.6.1 or 13.6.2 above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an award of arbitration is made in accordance with Subsection 13.6.3 and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate

administrative proceedings to enforce the terms of such negotiation, mediation, or the award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation, mediation or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties jointly and severally), all costs incurred to enforce (but not to obtain) the terms of the negotiation or mediation or the award including, without limitation, attorneys' fees and court costs.

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

**13.11 Amendment of Article.** Without the express prior written consent of Declarant each Developer Owner, this Article may not be amended prior to expiration of the Class B Membership or expiration of the statute of repose under A.R.S. § 12-552 (whichever occurs later). The provisions of this Article shall be deemed severable, and should any portion be declared unenforceable by any court of competent jurisdiction, the remaining provisions shall be unaffected. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE XIII ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE LOTS AND PARCELS AND A DEVELOPER OWNER'S WILLINGNESS TO CONSTRUCT AND SELL A RESIDENCE AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE XIII, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS AND PARCELS AND EACH DEVELOPER OWNER WOULD HAVE BEEN UNABLE TO CONSTRUCT AND SELL THE RESIDENCES FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS OF THE RESIDENCES.

## ARTICLE 14

### TERM; AMENDMENTS; TERMINATION

**14.1 Term; Method of Termination.** This Declaration shall be effective upon its Recordation and, as amended from time to time, shall continue in full force and effect unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting 90% of the total votes entitled to be cast by the entire Membership. Upon the Recording of a certificate of termination executed by the President and Secretary of the Association confirming such vote, this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona. No such termination shall be effective during Declarant Control Period unless approved in writing by Declarant.

#### 14.2 Amendments.

**14.2.1 By Declarant.** Subject to Section 1.23, in addition to specific amendment rights granted elsewhere in this Declaration, until termination of Declarant Control

Period, Declarant may amend this Declaration for any purpose, and without the consent or approval of any Owners or Members, or any other Person.

After termination of Declarant Control Period, Declarant may of its own volition, and without the consent or approval of any Owners or Members, or any other Person, amend this Declaration for the following purposes: (a) to bring any provision hereof into compliance with Applicable Law; (b) enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to satisfy the requirements of any Agency; (d) to enable any governmental agency or reputable private insurance company to guarantee or insure mortgage loans on the Lots; or (e) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof.

Any amendment during such time as Declarant is a Class B Member or a Class A Member of the Association shall require the written approval of Declarant. Further, so long as Declarant owns any land within the Covered Property or the Annexable Property, Declarant may, without any other consent or approval, amend this Declaration to clarify the application of the provisions hereof to any land that may be annexed, or for any other reasonable purpose in connection with any land that may be annexed.

**14.2.2 By the Association.** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members which in the aggregate represent at least two-thirds of the total Class A votes allocable to Lots and Parcels, and Declarant's consent, as well, so long Declarant owns any portion of the Covered Property or Annexable Property. The Board, with a vote of the Voting Members, may with the written approval of Declarant so long as Declarant is a Member, make amendments necessary: (a) to bring any provision hereof into compliance with Applicable Law; (b) to satisfy the requirements of any Agency pertaining to lending criteria, or established as conditions for acceptability or approval of mortgages, mortgage insurance, loan guarantees or other factors; or (c) to correct any error or ambiguity, or to further the intent or purposes hereof by expanding upon the existing provisions hereof.

**14.2.3 Amendment of Tract Declarations.** A Tract Declaration may be amended as provided in such Tract Declaration, but only with the consent of Declarant so long as Declarant owns any Covered Property, or so long as Declarant owns any portion of the Annexable Property. Thereafter, a Tract Declaration may be amended as provided therein, and with the approval of the Board.

**14.3 Protection of Eligible Mortgage Holders.** If this Declaration has received formal written approval by the FNMA following written application by Declarant, then, after expiration of Declarant Control Period in addition to all other requirements for amendment set forth in this Declaration, the approval of Eligible Mortgage Holders holding First Mortgages on Lots representing at least 51% of the total Class A votes allocable to Owners, whose Lots are: (a) subject to Tract Declarations restricting the Lots to Single Family Residential Use; and (b) subject to First Mortgages held by such Eligible Mortgage Holders, shall be required to make amendments of a material nature to this Declaration that specifically impact such Single Family Residential Use properties by materially amending provisions dealing with the following:

- (a) Voting rights;
- (b) Assessments, Assessment Liens, or subordination of Assessment Liens;
- (c) Reserves for maintenance, repair, and replacement of Common Areas;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Common Areas or rights to their use;
- (f) Boundaries of any Lot, other than minor or insubstantial changes to avoid hardship, encroachment, boundary disputes, or that are approved by the applicable governmental agency;
- (g) Convertibility of Lots into Common Areas or vice versa, other than as provided herein;
- (h) Expansion or contraction of the Covered Property, or the addition, annexation, or withdrawal of property to or from the Covered Property, other than as contemplated hereby or in order to confirm such annexation or withdrawal;
- (i) Insurance or fidelity bonds;
- (j) Leasing of Lots;
- (k) Imposition of any restrictions on an Owner's right to sell the Owner's Lot;
- (l) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) Restoration or repair of any Common Areas (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;
- (n) Any action to terminate this Declaration after substantial destruction or condemnation occurs; or
- (o) Any provisions that expressly benefit First Mortgagees or Eligible Mortgage Holders.

Any Eligible Mortgage Holder who receives a written request to approve amendments to this Declaration and who does not submit a response to the requesting party within thirty (30) days after the request is made shall be deemed to have approved such request.

## ARTICLE 15

### PROJECT DISCLOSURES

**15.1 View Impairment.** Neither Declarant, nor any Declarant Affiliate, nor the Association nor any Developer Owner guarantees or represents that any view or passage of light and air over and across any portion of the Covered Property, including any Lot or Parcel, from adjacent Lots, Parcels or Common Area will be preserved without impairment. Neither Declarant, nor any Declarant Affiliate, nor the Association nor any Developer Owner shall have the obligation to prune, thin, remove or replace trees or other landscaping. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any view that exists at any point in time for a Lot or Parcel may be impaired or obstructed by further construction, including, without limitation, by construction of Improvements (including without limitation, landscaping) by Declarant, any Declarant Affiliate, any Developer Owner or by any third person (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant, any Declarant Affiliate, the Association or any Developer Owner with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

## ARTICLE 16

### MISCELLANEOUS

**16.1 Enforcement Rights.** Each Owner (including Declarant, so long as Declarant is an Owner) shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

**16.2 Interpretation of the Covenants.** Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration and any Tract Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

**16.3 Assumption of Risk.** Neither the Association, the members of the Board, the officers of the Association, the management company of the Association, nor Declarant nor any Developer Owner, shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or Occupant of any Lot or any guest or invitee of any Owner or Occupant or for any property of any such persons. Each Owner and Occupant of a Lot and each guest, and invitee of any Owner or Occupant shall assume all risks associated with the use and enjoyment of the Covered Property, including all Common Area.

Neither the Association, the members of the Board, the officers of the Association, the Association's management company nor Declarant nor any Developer Owner shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of above-ground or underground utility lines, utility sub-stations or other utility

facilities adjacent to, near, over, under, or on the Covered Property. Each Owner and Occupant of a Lot and each guest, and invitee of any Owner or Occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of above-ground or underground utility lines, utility sub-stations or other utility facilities, and further acknowledges that neither the Association, the members of the Board, the officers of the Association, the Association's management company nor Declarant nor any Developer Owner have made any representations or warranties, nor has any Owner or Occupant, or any guest, or invitee of any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of above-ground or underground utility lines, utility sub-stations or other utility facilities.

No provision hereof, or of the other Governing Documents, shall be interpreted as creating a duty of the Association, the members of the Board, the officers of the Association, the management company of the Association or Declarant or any Developer Owner to protect or further the health, safety, or welfare of any Person, even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Covered Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the Board, the Association's management company, and Declarant and all Developer Owners, their directors, officers, committee and board members, employees, agents, contractors, subcontractors, successors, and assigns arising from or connected with any matter for which the liability has been disclaimed.

**16.4 Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

**16.5 Declarant's Disclaimer of Representations.** Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that any real property now owned or hereafter acquired by it, including but not limited to Annexable Property, is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect.

No provision or content of the Development Plan shall be deemed a representation that any facility, land or feature shall be included either in the Covered Property or the Common Area.

While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance

on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Parcel agrees to hold Declarant harmless therefrom.

**16.6 Severability.** If any provision of the Governing Documents or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Governing Documents, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of the Governing Documents, shall be construed as if the invalid part were never included therein.

**16.7 Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by Applicable Law, this Declaration or any resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Yavapai County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

**16.8 Successors and Assigns.** Any reference in this Declaration to Declarant shall include any successors or assignees of all or a specified portion of Declarant's rights and powers hereunder. Any such assignment shall be evidenced by a Recorded instrument executed by Declarant and its successor or assignee whereby such rights and powers (or any specified portion thereof) are specifically assigned.

**16.9 Exclusive Rights to Use Name of Development.** No Person shall use the name "Deep Well Ranch" or any derivative of such name in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the name "Deep Well Ranch" in printed or promotional matter where such term is used solely to specify that particular property is located within Deep Well Ranch and the Association shall be entitled to use the words "Deep Well Ranch" in its name.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

**DECLARANT:**

CHAMBERLAIN DEVELOPMENT PRESCOTT, L.L.C.,  
an Arizona limited liability company

By: Chamberlain Development LLC, an Arizona limited  
liability company, Manager

By: Sun State Builders, Inc., an Arizona  
corporation, Manager

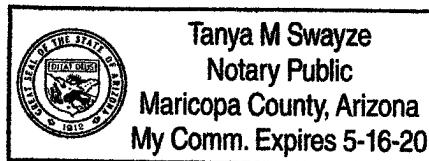
By: *[Signature]*  
Name: James M. Chamberlain  
Title: President

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of March,  
2019, by James M. Chamberlain, the President of Sun State Builders, Inc., an Arizona  
corporation, the Manager of Chamberlain Development LLC, an Arizona limited liability  
company, the Manager of CHAMBERLAIN DEVELOPMENT PRESCOTT, L.L.C., an Arizona  
limited liability company, on behalf thereof.

*Tanya M Swayze*  
Notary Public

(Seal)



**EXHIBIT A**

**Legal Description of Covered Property**

**PARCEL 1:**

All that portion of land lying in Section 35, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said Section 35, from whence the southwest corner of said Section 35 bears South 00° 34' 16" West, a distance of 5348.38 feet;

Thence North 89° 39' 34" East, along the north line of said Section 35, a distance of 2512.41 feet to a point on the westerly right of way line of the realigned Willow Creek Road as recorded in Instrument Number 2016-0009759, Yavapai County Recorder's Office, Yavapai County, Arizona;

Thence South 04° 57' 49" East, along said westerly right of way line, a distance of 44.71 feet to the TRUE POINT OF BEGINNING;

Thence continuing South 04° 57' 49" East, along said westerly right of way line, a distance of 64.84 feet;

Thence along a non-tangent curve, along said westerly right of way line, concave to the west, having a radius of 26898.00 feet, a central angle of 00° 40' 23", an arc length of 315.98 feet, a chord bearing of South 00° 06' 30" East and a chord length of 315.98 feet;

Thence South 00° 13' 42" West, along said westerly right of way line, a distance of 52.82 feet;

Thence South 05° 48' 01" West, along said westerly right of way line, a distance of 205.97 feet;

Thence South 00° 13' 42" West, along said westerly right of way line, a distance of 255.00 feet;

Thence South 04° 15' 23" East, along said westerly right of way line, a distance of 19.94 feet;

Thence North 90° 00' 00" West, a distance of 768.84 feet;

Thence North 00° 20' 26" West, a distance of 341.66 feet;

Thence along a non-tangent curve, concave to the northwest, having a radius of 277.50 feet, a central angle of 65° 38' 42", an arc length of 317.94 feet, a chord bearing of North 55° 35' 31" East and a chord length of 300.83 feet;

Thence along a reverse-tangent curve, concave to the southeast, having a radius of 1500.00 feet, a central angle of 10° 39' 22", an arc length of 278.98 feet, a chord bearing of North 28° 05' 51" East and a chord length of 278.58 feet;

Thence North  $33^{\circ} 25' 32''$  East, a distance of 121.73 feet;

Thence along a non-tangent curve, concave to the northwest, having a radius of 50.00 feet, a central angle of  $65^{\circ} 04' 41''$ , an arc length of 56.79 feet, a chord bearing of North  $55^{\circ} 52' 37''$  East and a chord length of 53.79 feet;

Thence along a reverse-tangent curve, concave to the southeast, having a radius of 35.00 feet, a central angle of  $66^{\circ} 01' 35''$ , an arc length of 40.33 feet, a chord bearing of North  $56^{\circ} 21' 04''$  East and a chord length of 38.14 feet;

Thence North  $89^{\circ} 21' 51''$  East, a distance of 262.51 feet to the TRUE POINT OF BEGINNING.

Containing 539,186.78 sf. or 12.38 acres more or less.

PARCEL 2A:

All that portion of land lying in Section 26, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the southwest corner of said Section 26, from whence the west quarter corner of said Section 26 bears North  $01^{\circ} 37' 27''$  West, a distance of 2646.21 feet;

Thence North  $89^{\circ} 39' 34''$  East, along the south line of said Section 26, a distance of 1311.99 feet;

Thence North  $01^{\circ} 35' 08''$  West, a distance of 225.72 feet to the TRUE POINT OF BEGINNING;

Thence continuing North  $01^{\circ} 35' 08''$  West, a distance of 1261.38 feet;

Thence North  $57^{\circ} 42' 57''$  East, a distance of 166.10 feet;

Thence North  $88^{\circ} 24' 52''$  East, a distance of 32.00 feet;

Thence North  $01^{\circ} 35' 08''$  West, a distance of 100.64 feet;

Thence South  $89^{\circ} 50' 09''$  East, a distance of 57.39 feet;

Thence North  $60^{\circ} 08' 48''$  East, a distance of 94.18 feet;

Thence North  $40^{\circ} 21' 57''$  East, a distance of 63.14 feet;

Thence North  $35^{\circ} 33' 26''$  East, a distance of 33.53 feet;

Thence North  $19^{\circ} 09' 04''$  East, a distance of 232.33 feet;

Thence North 24° 26' 16" East, a distance of 82.20 feet;

Thence North 26° 08' 02" East, a distance of 33.82 feet;

Thence North 32° 59' 01" East, a distance of 60.45 feet;

Thence North 30° 31' 39" East, a distance of 54.10 feet;

Thence North 16° 24' 04" East, a distance of 86.88 feet;

Thence North 63° 09' 42" East, a distance of 348.00 feet;

Thence South 78° 40' 38" East, a distance of 92.44 feet;

Thence North 76° 41' 12" East, a distance of 38.00 feet;

Thence South 49° 02' 48" East, a distance of 18.69 feet;

Thence South 86° 04' 26" East, a distance of 46.50 feet;

Thence North 80° 04' 15" East, a distance of 33.98 feet to a point on the westerly right of way line of the realigned Willow Creek Road as recorded in Instrument Number 2016-0009759, Yavapai County Recorder's Office, Yavapai County, Arizona;

Thence South 19° 36' 49" East, along said westerly right of way line, a distance of 57.55 feet;

Thence South 78° 17' 59" West, a distance of 27.69 feet;

Thence South 82° 31' 48" West, a distance of 22.65 feet;

Thence North 86° 31' 24" West, a distance of 54.90 feet;

Thence South 59° 29' 13" West, a distance of 18.69 feet;

Thence South 34° 03' 29" West, a distance of 22.18 feet;

Thence South 21° 17' 28" West, a distance of 43.22 feet;

Thence South 62° 09' 32" West, a distance of 138.72 feet;

Thence South 26° 51' 51" East, a distance of 543.43 feet;

Thence North 63° 08' 09" East, a distance of 82.21 feet to a point on said westerly right of way line of the realigned Willow Creek Road;

Thence South 05° 10' 47" West, along said westerly right of way line, a distance of 37.92 feet;

Thence South 01° 34' 50" East, along said westerly right of way line, a distance of 95.00 feet;

Thence South 25° 19' 48" East, along said westerly right of way line, a distance of 54.63 feet;

Thence South 01° 34' 50" East, along said westerly right of way line, a distance of 95.00 feet;

Thence South 07° 17' 28" East, along said westerly right of way line, a distance of 130.65 feet;

Thence South 01° 34' 50" East, along said westerly right of way line, a distance of 475.00 feet;

Thence South 35° 17' 22" West, along said westerly right of way line, a distance of 25.00 feet;

Thence South 01° 34' 50" East, along said westerly right of way line, a distance of 115.00 feet;

Thence South 38° 27' 02" East, along said westerly right of way line, a distance of 25.00 feet;

Thence South 01° 34' 50" East, along said westerly right of way line, a distance of 140.00 feet;

Thence South 00° 48' 38" West, along said westerly right of way line, a distance of 529.00 feet;

Thence South 04° 57' 49" East, along said westerly right of way line, a distance of 90.20 feet to a point on said south line of Section 26;

Thence South 89° 39' 34" West, along said south line, a distance of 337.58 feet;

Thence North 01° 34' 28" West, a distance of 225.72 feet;

Thence South 89° 39' 34" West, a distance of 862.89 feet to the TRUE POINT OF BEGINNING.

Containing 2,207,809.62 sf. or 50.68 acres more or less.

**PARCEL 2B:**

All that portion of land lying in Section 26, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the southwest corner of said Section 26, from whence the west quarter corner of said Section 26 bears North 01° 37' 27" West, a distance of 2646.21 feet;

Thence North 89°39'34" East, along the south line of said Section 26, a distance of 1311.99 feet;

Thence North  $01^{\circ} 35' 08''$  West, a distance of 1487.10 feet to the TRUE POINT OF BEGINNING;

Thence continuing North  $01^{\circ} 35' 08''$  West, a distance of 1153.50 feet to a point intersecting the east-west center section line of said Section 26;

Thence North  $56^{\circ} 44' 22''$  East, a distance of 519.60 feet;

Thence North  $38^{\circ} 47' 48''$  East, a distance of 410.77 feet;

Thence North  $76^{\circ} 43' 11''$  East, a distance of 786.17 feet;

Thence North  $44^{\circ} 32' 59''$  East, a distance of 528.30 feet;

Thence North  $76^{\circ} 42' 46''$  East, a distance of 230.65 feet to a point on the westerly right of way line of State Route 89 as shown on the Arizona Department of Transportation Right of Way Plans, Project Number 089 YV 320 H8039, Dated February 5th, 2014;

Thence South  $13^{\circ} 16' 50''$  East, along said westerly right of way line, a distance of 276.22 feet;

Thence South  $11^{\circ} 56' 34''$  West, along said westerly right of way line, a distance of 326.18 feet;

Thence South  $76^{\circ} 43' 10''$  West, along said westerly right of way line, a distance of 28.00 feet to a point on the westerly right of way line of the realigned Willow Creek Road as recorded in Instrument Number 2016-0009759, Yavapai County Recorder's Office, Yavapai County, Arizona;

Thence South  $48^{\circ} 52' 16''$  West, along said westerly right of way line, a distance of 107.06 feet;

Thence South  $76^{\circ} 43' 11''$  West, along said westerly right of way line, a distance of 413.17 feet;

Thence along a tangent curve, concave to the southeast, having a radius of 840.00 feet, a central angle of  $17^{\circ} 49' 27''$ , an arc length of 261.32 feet, a chord bearing of South  $67^{\circ} 48' 27''$  West, and a chord length of 260.26 feet;

Thence South  $63^{\circ} 26' 14''$  West, along said westerly right of way line, a distance of 68.10 feet;

Thence South  $46^{\circ} 04' 02''$  West, along said westerly right of way line, a distance of 70.96 feet;

Thence South  $37^{\circ} 56' 34''$  West, along said westerly right of way line, a distance of 111.46 feet;

Thence South  $20^{\circ} 49' 53''$  West, along said westerly right of way line, a distance of 76.92 feet;

Thence South  $06^{\circ} 17' 35''$  West, along said westerly right of way line, a distance of 73.34 feet;

Thence South  $04^{\circ} 46' 12''$  East, along said westerly right of way line, a distance of 89.16 feet;

Thence South  $19^{\circ} 36' 49''$  East, along said westerly right of way line, a distance of 162.70 feet to a point herein designated as point "A";

Thence South  $80^{\circ} 04' 15''$  West, a distance of 33.98 feet;

Thence North  $86^{\circ} 04' 26''$  West, a distance of 46.50 feet;

Thence North  $49^{\circ} 02' 48''$  West, a distance of 18.69 feet;

Thence South  $76^{\circ} 41' 12''$  West, a distance of 38.00 feet;

Thence North  $78^{\circ} 40' 38''$  West, a distance of 92.44 feet;

Thence South  $63^{\circ} 09' 42''$  West, a distance of 348.00 feet;

Thence South  $16^{\circ} 24' 04''$  West, a distance of 86.88 feet;

Thence South  $30^{\circ} 31' 39''$  West, a distance of 54.10 feet;

Thence South  $32^{\circ} 59' 01''$  West, a distance of 60.45 feet;

Thence South  $26^{\circ} 08' 02''$  West, a distance of 33.82 feet;

Thence South  $24^{\circ} 26' 16''$  West, a distance of 82.20 feet;

Thence South  $19^{\circ} 09' 04''$  West, a distance of 232.33 feet;

Thence South  $35^{\circ} 33' 26''$  West, a distance of 33.53 feet;

Thence South  $40^{\circ} 21' 57''$  West, a distance of 63.14 feet;

Thence South  $60^{\circ} 08' 48''$  West, a distance of 94.18 feet;

Thence North  $89^{\circ} 50' 09''$  West, a distance of 57.39 feet;

Thence South  $01^{\circ} 35' 08''$  East, a distance of 100.64 feet;

Thence South  $88^{\circ} 24' 52''$  West, a distance of 32.00 feet;

Thence South  $57^{\circ} 42' 57''$  West, a distance of 166.10 feet to the TRUE POINT OF BEGINNING.

Containing 1,556,054.66 sf. or 35.72 acres more or less.

TOGETHER WITH all that portion of land lying in Section 26, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at aforementioned point "A";

Thence South 19° 36' 49" East, along said westerly right of way line of the realigned Willow Creek Road, a distance of 57.55 feet to the TRUE POINT OF BEGINNING;

Thence continuing South 19° 36' 49" East, along said westerly right of way line, a distance of 89.35 feet;

Thence South 02° 31' 56" West, along said westerly right of way line, a distance of 74.29 feet;

Thence South 08° 15' 24" East, along said westerly right of way line, a distance of 29.04 feet;

Thence South 28° 49' 01" East, along said westerly right of way line, a distance of 41.60 feet;

Thence South 06° 05' 15" East, along said westerly right of way line, a distance of 150.69 feet;

Thence South 05° 10' 47" West, along said westerly right of way line, a distance of 213.24 feet;

Thence South 63° 08' 09" West, a distance of 82.21 feet;

Thence North 26° 51' 51" West, a distance of 543.43 feet;

Thence North 62° 09' 32" East, a distance of 138.72 feet;

Thence North 21° 17' 28" East, a distance of 43.22 feet;

Thence North 34° 03' 29" East, a distance of 22.18 feet;

Thence North 59° 29' 13" East, a distance of 18.69 feet;

Thence South 86° 31' 24" East, a distance of 54.90 feet;

Thence North 82° 31' 48" East, a distance of 22.64 feet;

Thence North 78° 17' 59" East, a distance of 27.69 feet to the TRUE POINT OF BEGINNING.

Containing 121,653.05 sf. or 2.79 acres more or less.

Total Area: 1,677,707.71 sf. or 38.51 acres more or less.

PARCEL 2C:

All that portion of land lying in Section 35, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said Section 35, from whence the southwest corner of said Section 35 bears South  $00^{\circ} 34' 16''$  West, a distance of 5348.38 feet;

Thence North  $89^{\circ} 39' 34''$  East, along the north line of said Section 35, a distance of 2158.19 feet to the TRUE POINT OF BEGINNING;

Thence continuing North  $89^{\circ} 39' 34''$  East, along said north line, a distance of 354.22 feet to a point on the westerly right of way line of the realigned Willow Creek Road as recorded in Instrument Number 2016-0009759, Yavapai County Recorder's Office, Yavapai County, Arizona;

Thence South  $04^{\circ} 57' 49''$  East, along said westerly right of way line, a distance of 44.71 feet;

Thence South  $89^{\circ} 21' 51''$  West, a distance of 262.51 feet;

Thence along a tangent curve, concave to the southeast, having a radius of 35.00 feet, a central angle of  $66^{\circ} 01' 35''$ , an arc length of 40.33, a chord bearing of South  $56^{\circ} 21' 04''$  West, and a chord length of 38.14 feet;

Thence along a reverse tangent curve, concave to the northeast, having a radius of 50.00 feet, a central angle of  $225^{\circ} 39' 07''$ , an arc length of 196.92, a chord bearing of North  $43^{\circ} 50' 10''$  West, and a chord length of 92.17 feet to the TRUE POINT OF BEGINNING.

Containing 21,384.99 sf. or 0.49 acres more or less.

PARCEL 3:

All that portion of land lying in Section 26, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the north quarter corner of said Section 26, from whence the northeast corner of said Section 26 bears South  $89^{\circ} 48' 50''$  East, a distance of 2631.67 feet;

Thence South  $01^{\circ} 34' 18''$  East, along the north-south center section line of said Section 26, a distance of 2446.49 feet to a point on the easterly right of way line of the realigned Willow Creek Road as recorded in Instrument Number 2016-0009759, Yavapai County Recorder's Office, Yavapai County, Arizona, and the TRUE POINT OF BEGINNING;

Thence along a non-tangent curve, along said easterly right of way line, concave to the southeast, having a radius of 205.00 feet, a central angle of  $21^{\circ} 43' 48''$ , an arc length of 77.75 feet, a chord bearing of North  $48^{\circ} 01' 49''$  East and a chord length of 77.28 feet;

Thence along a tangent compound curve, along said easterly right of way line, concave to the southeast, having a radius of 705.00 feet, a central angle of  $17^{\circ} 49' 27''$ , an arc length of 219.32 feet, a chord bearing of North  $67^{\circ} 48' 27''$  East and a chord length of 218.44 feet;

Thence North  $76^{\circ} 43' 11''$  East, along said easterly right of way line, a distance of 103.17 feet;

Thence South  $82^{\circ} 01' 48''$  East, along said easterly right of way line, a distance of 96.57 feet;

Thence North  $76^{\circ} 43' 11''$  East, along said easterly right of way line, a distance of 314.67 feet to a point on the westerly right of way line of State Route 89 as shown on the Arizona Department of Transportation Right of Way Plans, Project Number 089 YV 320 H8039, Dated February 5th, 2014;

Thence continuing North  $76^{\circ} 43' 11''$  East, along said westerly right of way line, a distance of 55.00 feet;

Thence South  $56^{\circ} 26' 48''$  East, along said westerly right of way line, a distance of 197.32 feet to a point on the westerly right of way line of State Route 89 as shown on the Arizona Department of Transportation Right of Way Plans, Project Number 089 YV 319 H8518, Dated December 27th, 2017;

Thence South  $13^{\circ} 16' 46''$  East, along said westerly right of way line, a distance of 254.56 feet;

Thence South  $76^{\circ} 44' 54''$  West, a distance of 193.81 feet to a point on the north line of an un-subdivided area of Antelope Crossings Phase 1 as recorded in Instrument Number 2018-0041086, Yavapai County Recorder's Office, Yavapai County, Arizona;

Thence continuing South  $76^{\circ} 44' 54''$  West, along said north line, a distance of 135.98 feet;

Thence South  $88^{\circ} 25' 10''$  West, along said north line, a distance of 537.95 feet;

Thence South  $78^{\circ} 15' 57''$  West, along said north line, a distance of 176.28 feet to a point on said easterly right of way line of the realigned Willow Creek Road;

Thence North  $01^{\circ} 41' 27''$  West, along said easterly line, a distance of 66.02 feet to the center section corner of said Section 26;

Thence North  $01^{\circ} 34' 18''$  West, along said easterly line, a distance of 187.76 feet to the TRUE POINT OF BEGINNING.

Containing 354,428.94 sf. or 8.14 acres more or less.

PARCEL 4:

All that portion of land lying in Section 26, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the north quarter corner of said Section 26, from whence the northeast corner of said Section 26 bears South 89° 48' 50" East, a distance of 2631.67 feet;

Thence South 01° 34' 18" East, along the north-south center section line of said Section 26, a distance of 2634.25 feet to the center section corner of said Section 26;

Thence North 89° 53' 46" East, along the east-west center section line of said Section 26, a distance of 1062.49 feet to a point on the westerly right of way line of State Route 89 as recorded in Book 207 of Official Records, Page 396, Yavapai County Recorder's Office, Yavapai County, Arizona;

Thence South 13° 16' 50" East, along said westerly right of way line, a distance of 587.37 feet to the TRUE POINT OF BEGINNING;

Thence continuing South 13° 16' 50" East, along said westerly right of way line, a distance of 250.33 feet to a point on the easterly boundary line of Antelope Crossings Phase 1 as recorded in Instrument Number 2018-0041086, Yavapai County Recorder's Office, Yavapai County, Arizona;

Thence South 89° 48' 39" West, along said easterly boundary line, a distance of 402.89 feet;

Thence North 03° 27' 35" West, along said easterly boundary line, a distance of 12.43 feet;

Thence South 81° 19' 54" West, along said easterly boundary line, a distance of 147.84 feet;

Thence North 01° 34' 50" West, along said easterly boundary line, a distance of 258.13 feet;

Thence South 89° 38' 04" East, along said easterly boundary line, a distance of 284.22 feet;

Thence continuing South 89° 38' 04" East, a distance of 215.19 feet to the TRUE POINT OF BEGINNING.

Containing 128,909.27 sf. or 2.96 acres more or less.

PARCEL 5:

All that portion of land lying in Section 26 and Section 35, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the southeast corner of said Section 26, from whence the south quarter corner of said Section 26 bears South  $89^{\circ} 35' 04''$  West, a distance of 2628.53 feet;

Thence South  $89^{\circ} 35' 04''$  West, along the south line of said Section 26, a distance of 1673.10 feet to the TRUE POINT OF BEGINNING;

Thence South  $00^{\circ} 00' 00''$  West, a distance of 55.80 feet;

Thence South  $50^{\circ} 03' 54''$  West, a distance of 138.36 feet;

Thence South  $48^{\circ} 27' 57''$  East, a distance of 141.72 feet;

Thence South  $00^{\circ} 00' 00''$  West, a distance of 351.82 feet;

Thence South  $41^{\circ} 32' 03''$  West, a distance of 25.42 feet;

Thence South  $89^{\circ} 35' 04''$  West, a distance of 890.95 feet to a point on the easterly right of way line of the realigned Willow Creek Road as recorded in Instrument Number 2016-0009759, Yavapai County Recorder's Office, Yavapai County, Arizona;

Thence North  $00^{\circ} 13' 42''$  East, along said easterly right of way line, a distance of 182.55 feet;

Thence along a non-tangent curve, along said easterly right of way line, concave to the west, having a radius of 27050.00 feet, a central angle of  $01^{\circ} 05' 51''$ , an arc length of 518.14 feet, a chord bearing of North  $00^{\circ} 19' 14''$  West and a chord length of 518.13 feet;

Thence North  $00^{\circ} 14' 17''$  East, along said easterly right of way line, a distance of 21.14 feet to a point on the south boundary line of Antelope Crossings Phase 3 as recorded in Instrument Number 2018-0052507, Yavapai County Recorder's Office, Yavapai County, Arizona;

Thence North  $88^{\circ} 26' 09''$  East, along said south boundary line, a distance of 906.64 feet;

Thence South  $01^{\circ} 33' 51''$  East, a distance of 130.73 feet to the TRUE POINT OF BEGINNING.

Containing 653,399.94 sf. or 15.00 acres more or less.

PARCEL 6:

All that portion of land lying in Section 25 and Section 26, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the northeast corner of said Section 26, from whence the east quarter corner of said Section 26 bears South  $01^{\circ} 33' 02''$  East, a distance of 2620.89 feet;

Thence South  $01^{\circ} 33' 02''$  East, along the east line of said Section 26, a distance of 1821.31 feet to the TRUE POINT OF BEGINNING.

Thence South  $51^{\circ} 42' 41''$  East, a distance of 82.94 feet to a point on the northerly right of way line of Ruger Road as recorded in Book 22 of Maps and Plats, Page 25, Yavapai County Recorder's Office, Yavapai County, Arizona;

Thence South  $41^{\circ} 33' 16''$  West, along said northerly right of way line, a distance of 93.55 feet;

Thence South  $23^{\circ} 49' 49''$  West, along said northerly right of way line, a distance of 403.64 feet to a point on the easterly right of way line of Deep Wells Ranch Road as shown on the Arizona Department of Transportation Right of Way Plans, Project Number 089 YV 320 H8039, Dated February 5th, 2014;

Thence South  $86^{\circ} 13' 00''$  West, along said easterly right of way line, a distance of 56.20 feet;

Thence North  $48^{\circ} 24' 50''$  West, along said easterly right of way line, a distance of 584.56 feet;

Thence North  $41^{\circ} 35' 10''$  East, along said easterly right of way line, a distance of 30.00 feet;

Thence North  $48^{\circ} 24' 50''$  West, along said easterly right of way line, a distance of 100.00 feet;

Thence South  $41^{\circ} 35' 10''$  West, along said easterly right of way line, a distance of 30.00 feet;

Thence North  $48^{\circ} 24' 50''$  West, along said easterly right of way line, a distance of 95.17 feet;

Thence North  $43^{\circ} 10' 25''$  West, along said easterly right of way line, a distance of 100.00 feet to a point on the northerly right of way line of said Deep Wells Ranch Road;

Thence along a non-tangent curve, along said northerly right of way line, concave to the northwest, having a radius of 950.00 feet, a central angle of  $29^{\circ} 53' 35''$ , an arc length of 495.64 feet, a chord bearing of South  $61^{\circ} 46' 22''$  West and a chord length of 490.04 feet;

Thence South  $76^{\circ} 43' 10''$  West, along said northerly right of way line, a distance of 36.20 feet to a point on the easterly right of way line of State Route 89 as shown on the Arizona Department of Transportation Right of Way Plans, Project Number 089 YV 320 H8039, Dated February 5th, 2014;

Thence North  $34^{\circ} 09' 11''$  West, along said easterly right of way line, a distance of 333.99 feet;

Thence North  $13^{\circ} 16' 49''$  West, along said easterly right of way line, a distance of 682.13 feet;

Thence South  $88^{\circ} 01' 26''$  East, a distance of 481.25 feet;

Thence South  $57^{\circ} 04' 02''$  East, a distance of 100.78 feet;

Thence South 44° 13' 16" East, a distance of 125.71 feet;

Thence South 57° 31' 08" East, a distance of 64.46 feet;

Thence South 67° 27' 08" East, a distance of 141.57 feet;

Thence South 72° 03' 03" East, a distance of 163.37 feet;

Thence South 84° 41' 52" East, a distance of 65.29 feet;

Thence South 51° 42' 41" East, a distance of 790.12 feet to the TRUE POINT OF BEGINNING.

Containing 1,039,364.51 sf. or 23.86 acres more or less.

PARCEL 7:

All that portion of land lying in Section 26, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the northeast corner of said Section 26;

Thence South 01° 33' 02" East, along the east line of said Section 26, a distance of 2620.89 feet to the east quarter corner of said Section 26;

Thence South 89° 53' 46" West, along the east-west center section line of said Section 26, a distance of 762.89 feet to the TRUE POINT OF BEGINNING.

Thence continuing South 89° 53' 46" West, along said east-west center section line, a distance of 584.14 feet to a point on the easterly right of way line of State Route 89 as shown on the Arizona Department of Transportation Right of Way Plans, Project Number 089 YV 319 H8518, Dated December 27th, 2017;

Thence North 13° 16' 50" West, along said easterly right of way line, a distance of 370.56 feet to a point on the easterly right of way line of State Route 89 as shown on the Arizona Department of Transportation Right of Way Plans, Project Number 089 YV 320 H8039, Dated February 5th, 2014;

Thence North 26° 17' 53" East, a distance of 222.87 feet to a point on the southerly right of way line of Deep Wells Ranch Road as shown on said Arizona Department of Transportation Right of Way Plans, Project Number 089 YV 320 H8039, Dated February 5th, 2014;

Thence North 76° 43' 10" East, along said southerly right of way line, a distance of 36.20 feet;

Thence along a tangent curve, along said southerly right of way line, concave to the northwest, having a radius of 1050.00 feet, a central angle of  $19^{\circ} 50' 36''$ , an arc length of 363.65 feet, a chord bearing of North  $66^{\circ} 47' 52''$  East and a chord length of 361.83 feet;

Thence South  $85^{\circ} 46' 04''$  East, along said southerly right of way line, a distance of 133.49 feet to a point on the westerly right of way line of said Deep Wells Ranch Road;

Thence South  $48^{\circ} 24' 50''$  East, along said westerly right of way line, a distance of 21.84 feet;

Thence South  $41^{\circ} 35' 10''$  West, along said westerly right of way line, a distance of 25.00 feet;

Thence South  $48^{\circ} 24' 50''$  East, along said westerly right of way line, a distance of 100.00 feet;

Thence North  $41^{\circ} 35' 10''$  East, along said westerly right of way line, a distance of 25.00 feet;

Thence South  $48^{\circ} 24' 50''$  East, along said westerly right of way line, a distance of 454.34 feet;

Thence South  $48^{\circ} 39' 16''$  West, a distance of 481.34 feet to the TRUE POINT OF BEGINNING.

Containing 512,374.53 sf. or 11.76 acres more or less.

PARCEL 8:

All that portion of land lying in Section 26 and Section 35, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said Section 35, from whence the southwest corner of said Section 35 bears South  $00^{\circ} 34' 16''$  West, a distance of 5348.38 feet and the west quarter of said Section 26 bears North  $01^{\circ} 37' 27''$  West, a distance of 2646.21 feet;

Thence North  $89^{\circ} 39' 34''$  East, along the north line of said Section 35, a distance of 1311.99 feet to the TRUE POINT OF BEGINNING;

Thence North  $01^{\circ} 35' 08''$  West, a distance of 225.72 feet;

Thence North  $89^{\circ} 39' 34''$  East, a distance of 862.89 feet;

Thence South  $01^{\circ} 34' 28''$  East, a distance of 225.72 feet to a point on the north line of said Section 35;

Thence South  $89^{\circ} 39' 34''$  West, along said north line, a distance of 16.64 feet;

Thence along a non-tangent curve, concave to the east, having a radius of 50.00 feet, a central angle of  $160^{\circ} 34' 26''$ , an arc length of 140.13 feet, a chord bearing of South  $11^{\circ} 17' 49''$  East and a chord length of 98.57 feet;

Thence South  $33^{\circ} 25' 32''$  West for a distance of 121.73 feet;

Thence along a tangent curve, concave to the southeast, having a radius of 1500.00 feet, a central angle of  $10^{\circ} 39' 22''$ , an arc length of 278.98 feet, a chord bearing of South  $28^{\circ} 05' 51''$  West and a chord length of 278.58 feet;

Thence along a reverse-tangent curve, concave to the northwest, having a radius of 277.50 feet, a central angle of  $65^{\circ} 38' 42''$ , an arc length of 317.94 feet, a chord bearing of South  $55^{\circ} 35' 31''$  West and a chord length of 300.83 feet;

Thence South  $89^{\circ} 39' 34''$  West, a distance of 364.81 feet;

Thence North  $00^{\circ} 49' 59''$  West, a distance of 611.46 feet to a point on the north line of said Section 35;

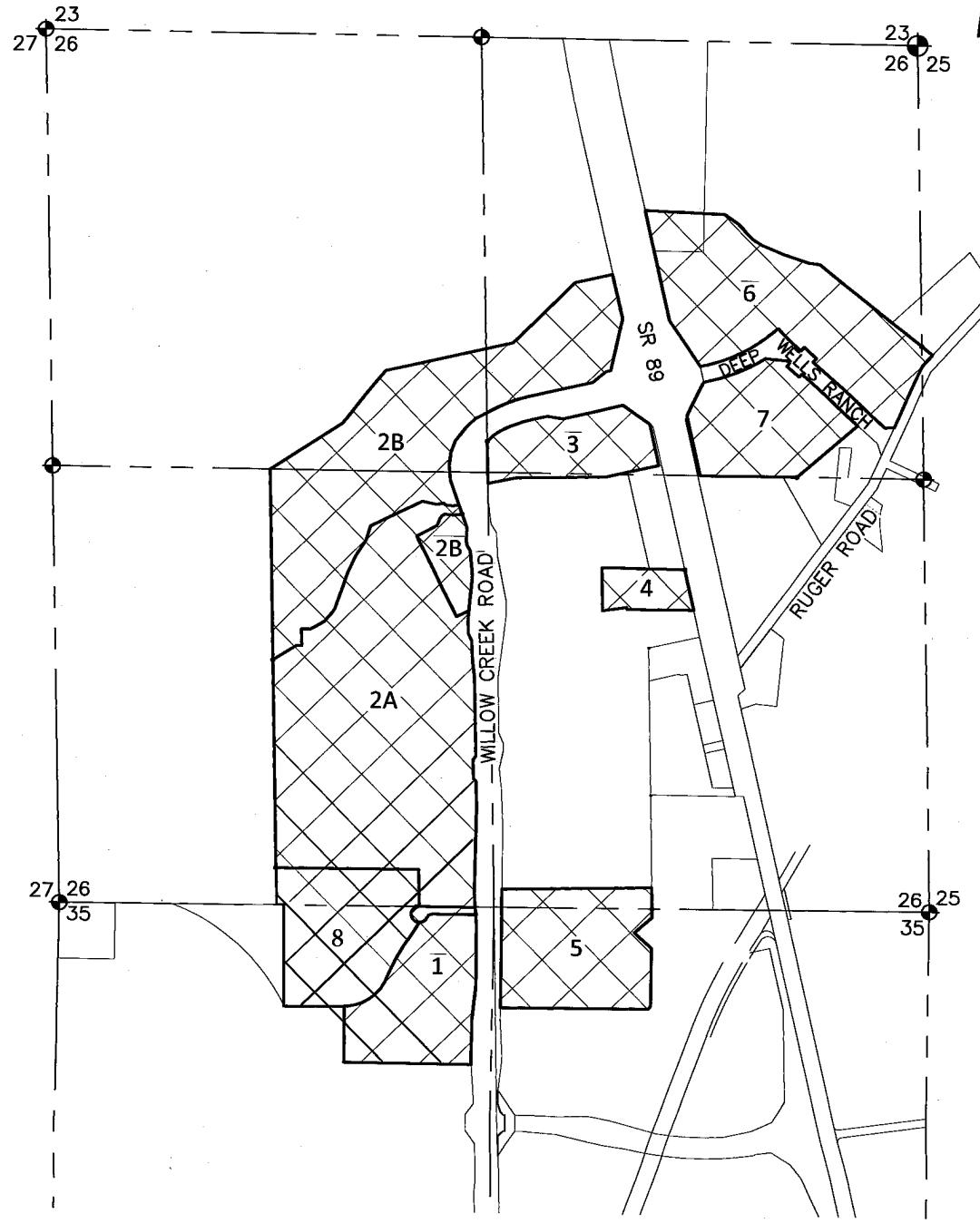
Thence South  $89^{\circ} 39' 34''$  West, along said north line, a distance of 45.35 feet to the TRUE POINT OF BEGINNING.

Containing 607,077.16 sf. or 13.94 acres more or less.

MAP TO ACCOMPANY  
LEGAL DESCRIPTION

THIS DESCRIPTION

SCALE: 1"=1000'



## **EXHIBIT B**

### **USE RESTRICTIONS**

#### **1. Residential Use.**

(a) All Lots and Residences shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residence, except that the Owner, Occupant or other Resident of a Residence may conduct a business activity within the Residence so long as: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (2) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Project; (3) the business activity does not involve persons coming to the Lot to purchase goods or services or the door-to-door solicitation of Owners, Occupants or Residents in the Project; (4) the use of the Residence for trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood; (5) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (6) the trade or business is conducted by a Resident or Residents of the Residence with no employee working in or from such Residence who is not a Resident thereof; (7) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (8) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (9) the use of the Residence for a trade or business does not violate any other provision of the Governing Documents.

(b) The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (1) such activity is engaged in full or part time; (2) such activity is intended or does generate a profit; or (3) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

2. **Temporary Occupancy and Temporary Buildings.** With the exception of construction trailers of Developer Owners or Declarant, no trailer, basement of any incomplete building, tent, shack, motorhome, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Board shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Board.

**3. Nuisances; Construction Activities.**

(a) No rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No condition shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. The restrictions of this Section 3(a) shall be enforced without regard to the definition of Visible From Neighboring Property.

(b) Normal construction activities and day parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Board. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Board, which may also require screening of the storage areas. Each Owner shall be obligated to: (1) keep such Owner's Lot, as well as surrounding areas of the Project, including, without limitation, all pedestrian and road rights-of-way and drives, reasonably clean and clear of equipment, building materials, dirt, debris and similar materials in connection with or related to construction activities by or for the benefit of such Owner; and (2) promptly repair or rebuild any buildings, structures, landscaping or other improvements (including without limitation any Improvements that are damaged or destroyed through the act of any Owner or the Owner's contractors, agents or employees in connection with or related to construction activities by the Owner or the Owner's contractors, agents or employees, whether or not such act is negligent or otherwise culpable.

(c) No Person shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind. No Owner or other Person shall drill any type of water well within the Project.

(d) The provisions of this Section shall not apply to construction activities of Declarant or a Developer Owner.

**4. Antennas.** Except for antennas, satellite dishes and other over-the-air receiving devices covered by the FCC rules governing Over-the-Air Reception Devices; Television Broadcast Service and Multi-channel Multipoint Distribution Service (the "FCC Rule"), no antenna for the transmission or reception of television or radio signals or for access to the internet shall be installed on any Lot unless approved by the Board. Any antenna, satellite dish or other receiving device covered by the FCC Rule may be installed on a Lot without the prior approval of the Board of Directors provided the antenna, satellite dish or receiving device is placed inside a

Residence or is placed on the portion of the Lot which is the least Visible From Neighboring Property and does not interfere with the viewer's ability to install, maintain or use the antenna, satellite dish or receiving device. The Board shall have the right to adopt rules and regulations with respect to the installation and placement of antennas, satellite dishes and other receiving devices; provided, however, that the Board shall not impose or enforce any rule or regulation which is inconsistent with or prohibited by the FCC Rule.

**5. Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Board. In no event shall such containers be kept or placed on a Lot so as to be Visible From Neighboring Property, except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. The Board may prescribe specific time periods during which such containers may be placed for collection. All rubbish, trash, or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

**6. Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Board.

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

**8. Animals.**

(a) Except as expressly permitted by this Section 8, no animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept on any Lot. For purposes of this Section, a "Permitted Pet" shall mean a dog, cat, fish or small bird of a variety commonly kept as a household pet. No more than a total of two (2) dogs and/or two (2) domestic cats, or a combination thereof (but not to exceed three (3) total) shall be kept or maintained on a Lot. A reasonable number of fish or small birds of a variety commonly kept as a household pet may be kept on a Lot. Permitted Pets may not be kept, bred or raised for commercial purposes.

(b) All Permitted Pets allowed to be kept on a Lot under this Section 8 shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

(c) No Permitted Pet allowed to be kept on a Lot under this Section 8 shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any Permitted Pet allowed to be kept on a Lot under this Section 8 shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Occupant or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular Permitted Pet allowed to be kept on a Lot under this Section 8 is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

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

(e) 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 residential use of property or machinery or equipment necessary for the construction of a Residence, building, structure, or other Improvement on the Lot.

**9. Signs.** No signs whatsoever (including, but not limited to, "for sale" or "for lease" signs) may be erected, posted or displayed on any Lot in a location that is Visible From Neighboring Property without the prior written approval of the Board, except for the following: (a) signs constructed or erected by Declarant, a Developer Owner, or by the Association, (b) marketing and directional signs placed on Lots owned or under option by Declarant or a Developer Owner and in Common Areas with regard to the marketing and sale of Residences, and (c) signs which the Association is required by applicable law to permit to be displayed on a Lot, but the Association may regulate the size, location, design, content and appearance of such signs to the extent permitted by law.

**10. Further Subdivision, Covered Property Restrictions, Rezoning and Timeshares.** Without the prior written approval of the Board, no Owner other than Declarant shall do any of the following: (a) further subdivide a Lot or separate the Lot into smaller lots or parcels; (b) convey or transfer less than all of a Lot; or (c) replat the Lot or combine the Lot with other Lots. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Occupant, or other Person other than Declarant against any Lot without the provisions thereof having been first approved in writing by the Board. No application for rezoning, variances, use permits or adjustment of Slope Easement pertaining to any Lot shall be filed with any governmental authority by any Person other than Declarant unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration. No Lot shall be subjected to or used for any timesharing, cooperative, weekly, monthly or any other type or revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

## 11. Vehicles and Parking.

(a) As used in this Section, the following definitions apply: (1) "**Permitted Motor Vehicle**" means a car, van, sport utility vehicle, motorcycle, or pickup truck with a one-ton rating or less according to the Arizona Department of Motor Vehicles; and (3) "**Street**" means any street shown on the Plat.

(b) No Motor Vehicle shall be parked or stored on a Street or the Common Area. Except as expressly permitted by this Section, no Motor Vehicle may be parked, kept or stored on a Lot.

(c) No motor home, travel trailer, tent trailer, commercial trailer, construction equipment, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, commercial trailer, construction equipment, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot or street within the Project so as to be Visible From Neighboring Property; provided, however, that a travel trailer, tent trailer or motor home may be parked temporarily in the driveway of a Residence for a maximum of one (1) day to allow the Owner of the Lot to pack or unpack possessions from the travel trailer, tent trailer or motorhome.

(d) Motor Vehicles owned or leased by an Owner, Occupant or Resident of a Lot must be parked in the garage situated on the Lot to the extent space is available in the garage for the parking of such Motor Vehicles and subject to Section 13 below. If space is not available in the garage, then Motor Vehicles owned or leased by an Owner, Occupant or Resident of a Lot may be parked on the driveway situated on the Lot if such Motor Vehicle or anything contained therein thereof does not extend into a Street or onto any sidewalk. Parking of Motor Vehicles owned or leased by an Owner, Occupant or Resident of a Lot may only be parked on a driveway expansion constructed with the approval of the Board if space for the parking of such Motor Vehicles is not available either in the garage or in the driveway constructed as part of the initial construction of Improvements on the Lot. The parking of a Motor Vehicle owned or leased by an Owner, Occupant or Resident of a Lot on a driveway expansion is also subject to such rules and regulations as may be adopted by the Board. A car, van, sport utility vehicle, motorcycle, or pickup truck of a guest or invitee of a Resident may be parked in the driveway on the Lot if such Motor Vehicle or anything contained therein does not extend into a Street or onto any sidewalk.

(e) No Motor Vehicle of any kind may be stored on a Lot except in a garage. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material, is inoperable or has expired license plates. The Board may adopt rules specifying when a Motor Vehicle shall be considered stored for purposes of this Section.

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

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

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

**13. Garages.** No garage shall be converted to living spaces or altered or used for storage of material or other purposes so as to not allow for the parking of at least two (2) automobiles, except that Declarant may use a garage in one or more model homes for a sales office and/or a construction office. The interior of all garages shall be maintained and kept in a neat, clean and sightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except (i) when the opening of the door is necessary to permit ingress or egress, or (ii) for up to four (4) hours in any twenty-four hour period if the Owner is present in the garage while the garage door is open and any activity by the Owner is not apparent or detectable by sight, sound or smell from outside the Residence.

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

**15. Basketball Goals and Backboards.** No portable basketball goal or backboard shall be constructed, installed or maintained on any Lot. Permanent basketball goals or backboards may be kept on a Lot provided they are kept and used in accordance with the Association Rules which govern their size, design, color, material, location and hours of use. All permanent goals must be approved by the Board prior to installation.

**16. Playground Equipment.** No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Board.

**17. Rental of Lots.** No Owner may lease less than the Owner's entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Governing Documents and that any violation of this Declaration or the Association Rules by the Occupant or the other occupants shall be a default under the lease. There shall be no subleasing of Residences or assignments of leases. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the time period of the lease including the beginning and ending dates of the tenancy; (b) the name and contact information for each adult occupying the Residence during the lease term; and (c) a description and license plate numbers of

the Occupants' vehicles. Any Owner who leases his Lot and the Residence situated thereon must provide the Occupant with copies of this Declaration and the Association Rules. Any lease of a Lot or Residence situated thereon must be for an initial term of at least three (3) months. The Owner shall be liable for any violation of this Declaration or the Association Rules by the Occupants or other persons residing in the Residence and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations. For purposes of this Section 17, "lease" means any agreement whatsoever for the use, occupancy, rental, or lease of all or any portion of a Lot or the Residence located thereon, including, but not limited to, agreements for any of the foregoing purposes through services such as Airbnb, VRBO, Homeaway, and other similar services.

**18. Lights.** Except as initially installed by Declarant or a Developer Owner, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the Board.

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

**20. Flags and Flagpoles.** Except for the flags listed in A.R.S. §33-1808 (A), no flag may be displayed on a Lot if the flag is Visible From Neighboring Property without the prior written approval of the Board. The Board may adopt reasonable rules and regulations regarding the placement and manner of display of flags, including the flags listed in A.R.S. §33-1808 (A). The Association may adopt rules and regulations regulating the location and size of flagpoles, limiting an Owner or Resident to displaying no more than two flags at once and limiting the height of a flagpole to no more than the height of the rooftop of the Residence located on the Lot on which the flagpole is installed

**21. Declarant and Developer Owner Exemption.** Nothing contained in this Exhibit B shall be construed to prevent, restrict or otherwise limit the construction, installation or maintenance by Declarant, a Developer Owner, or their agents during the development and construction of Improvements on the Common Area by Declarant or Residences on Lots by Developer Owners, or the installation of marketing or directional signage by Declarant or a Developer Owner on Lots owned by such Developer Owner or subject to such Developer Owner's option, necessary for the development and sale of Residences on Lots.

**22. Assignment to Neighborhood Association.** The Board may non-exclusively assign the right to administer, enforce, and/or grant approvals under the terms of these Use Restrictions with respect to a portion of the Covered Property to the Neighborhood Association

established for such portion of the Covered Property under a Tract Declaration for such portion of the Covered Property.