

WHEN RECORDED RETURN TO:
Jerry Carver, Esq.
Roberts & Carver, PLLC - FOLDER

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

FOR

GRANITE DELLS ESTATES

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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND EASEMENTS
FOR GRANITE DELLS ESTATES

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS is executed as of the _____ day of _____, 2015, by GRANITE DELLS ESTATES PROPERTIES, INC., an Arizona corporation, and amends and restates the Declaration of Covenants, Conditions, Restrictions, and Easements recorded February 23, 2015, in the Official Records of Yavapai County, Arizona, as Document No. 2015-0007878.

RECITALS

A. Declarant is the beneficial owner and developer of land located in Prescott, Arizona, portions of which are proposed, without warranty or representation, to be developed or offered for development, as a part of a community to be known as Granite Dells Estates.

B. The property initially subject to this Declaration is described in Exhibit A attached hereto, and is defined herein as the "Covered Property." The Covered Property is subject to the terms and provisions hereof.

C. Declarant desires to see the Covered Property developed as one or more planned communities with residential and other areas, together with potential recreational areas, developed and undeveloped open spaces, trails, and other facilities.

D. As part of the development of the Covered Property, and without obligation to do so, Declarant intends to provide for the potential Recordation of various additional covenants, conditions and restrictions apart from this Declaration in the form of separate Tract Declarations which may cover certain portions of the Covered Property to be specified in such Tract Declarations.

E. Declarant desires and intends that the Covered Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, which: (i) are for the purpose of protecting the value, desirability, attractiveness and character of the Covered Property; (ii) shall run with all of the real property comprising the Covered Property; (iii) shall be binding on all parties having any right, title or interest in the Covered Property, or any part thereof; and (iv) shall inure to the benefit of the aforementioned parties and their successors and assigns.

F. Declarant desires to form an Arizona nonprofit corporation to be known as the "Granite Dells Estates Property Owners Association," for the purposes of, among other things: (i) holding title in fee or otherwise to the Common Areas; (ii) fostering the efficient preservation of the values and amenities of the Covered Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Areas and enforcing this Declaration and the Design Guidelines adopted pursuant hereto; and (iii) establishing, collecting, disbursing and enforcing the Assessments created herein.

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 **"Additional Covenants"** shall mean the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any Tract Declaration, any Recorded contract, deed, declaration or other instrument that may be permitted under this Declaration.

1.2 **"Annexable Property"** shall mean any real property near or adjacent to the Covered Property and which may be annexed under the purview hereof subject to Declarant's written consent and Recordation of a Tract Declaration approved by the Declarant. Annexable Property includes, without limitation, the real property subsequently identified by Declarant.

1.3 **"Agency" or "Agencies"** shall mean the FHA, the VA, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and any other governmental agency or financial institution participating in the insuring or guaranteeing of home loans within the Covered Property.

1.4 **"Annual Assessments"** shall mean the annual assessments levied by the Board pursuant to Section 8.2 hereof.

1.5 **"Apartment Parcel"** shall mean a Parcel designated by Declarant or in a Tract Declaration as having a Residential Apartment Land Use Classification.

1.6 **"Apartment Unit"** shall mean a Dwelling Unit located on a portion of the Covered Property which has been designated as being for Residential Apartment Development use, the occupancy of which is or is planned to be governed by a rental agreement as defined in A.R.S. §33-1310(11).

1.7 **"Articles"** shall mean the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.

1.8 **"Assessments"** shall mean all Annual Assessments, Special Assessments and Maintenance Assessments.

1.9 **"Assessment Lien"** shall mean the charge and continuing servitude and lien against a Lot or Parcel for payment of Assessments and Special Use Fees as described in Section 8.1 hereof.

1.10 **"Assessment Period"** shall mean each period for which Assessments are to be levied against a Lot or Parcel pursuant to this Declaration, as more particularly described in Section 8.9 hereof.

1.11 **"Association"** shall mean the "Granite Dells Estates Property Owners Association," an Arizona nonprofit corporation, its successors and assigns.

1.12 **"Association Rules"** shall mean the rules and regulations adopted by the Association pursuant to this Declaration.

1.13 **"Board"** shall mean the Board of Directors of the Association.

1.14 **"Bylaws"** shall mean the Bylaws of the Association, as amended or restated from time to time.

1.15 **"Common Areas"** shall mean all real property and the improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled or operated by the Association (including, but not limited to, areas used for landscaping, flood control, drainage, bicycle or jogging paths, parks, 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.

1.16 **"Condominium Parcel"** shall mean a Parcel designated in the Master Development Plan or in a Tract Declaration as having a Residential Condominium Development Land Use Classification.

1.17 **"Condominium Unit"** shall mean a Dwelling Unit constituting a "unit" in a "condominium," together with any appurtenant interest in all "common elements," as such terms are defined in Chapter 9, Title 33, Arizona Revised Statutes, as amended.

1.18 **"Covered Property"** shall mean the real property more particularly described on Exhibit A attached hereto, and such portions of the Annexable Property as may be annexed pursuant to the provisions hereof by Recordation of a Tract Declaration, all subject to the further provisions hereof dealing with withdrawal of land.

1.19 **"Declarant"** shall mean Granite Dells Estates Properties, Inc., an Arizona corporation, and any Declarant Affiliate as well as any assignees of all or part of the rights and duties granted or reserved to Declarant herein, which assignment shall be evidenced by a Recorded instrument executed by the assigning Declarant. Without limiting the foregoing any rights, benefits or other privileges granted to the "Declarant" in this Declaration shall inure to the benefit of both Granite Dells Estates Properties, Inc., or its assignees and all Declarant Affiliates; provided, however, that in the event "Declarant" is granted any right to take affirmative action under this Declaration (e.g., the right to appoint and remove member of the Design Review Committee pursuant to Section 4.1.8 hereof), such action shall be taken by Granite Dells Estates Properties, Inc., or its assignees, unless such rights are delegated in whole or in part to one or more Declarant Affiliates.

1.20 **"Declarant Affiliate"** shall mean any Person directly or indirectly controlling, controlled by or under common control with Granite Dells Estates Properties, Inc., or its assignees, and shall include without limitation, any general or limited partnership, limited liability company, corporation in which Granite Dells Estates Properties, Inc., or its assignees or another Declarant Affiliate is a general partner, managing member, majority member or controlling shareholder, or a Trust in which Granite Dells Estates Properties, Inc., or its assignees or another Declarant Affiliate is a beneficiary, provided such Person or entity is designated in writing by Declarant as a Declarant Affiliate.

1.21 **"Declaration"** shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Granite Dells Estates, as amended or supplemented from time to time.

1.22 **"Delinquent Amount"** shall mean any Assessment or Special Use Fee, or installment thereof, not paid when due.

1.23 **"Design Guidelines"** shall mean the rules and regulations adopted, amended and supplemented by the Design Review Committee pursuant to Section 4.4 hereof, and shall include architectural and landscape Design Guidelines.

1.24 **"Design Review Committee"** shall mean the committee(s) formed pursuant to Article 4 hereof. The Design Review Committee may elect to adopt any other name it may desire, including Architectural and Landscape Review Committee.

1.25 **"Developer Owner"** shall mean a Person in the business of developing, leasing and/or selling real property and who has in a single transaction acquired six (6) or more Lots or all or a portion of a Parcel in the Covered Property, in connection with, and in the course of, such business, for the purpose of developing, leasing or selling such Lots or Parcel, or portion thereof. A Developer Owner must be designated as such in writing by Declarant, at Declarant's sole discretion.

1.26 **"Dwelling Unit"** shall mean any building, or part thereof situated upon a Lot or Parcel and intended for use and occupancy as a residence by a Single Family.

1.27 **"Event of Foreclosure"** shall mean 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.

1.28 **"Exempt Property"** shall mean the following areas now or hereafter located within Granite Dells Estates, none of which are subject to Assessment, and no voting rights shall be associated therewith:

1.28.1 All Government Property;

1.28.2 All Common Areas for so long as Declarant or the Association is the owner thereof;

1.28.3 All Limited Common Areas; and,

1.28.4 All unmanned utility substations which provide utility services to all or any portion of the Covered Property unless and to the extent that the applicable Tract Declaration or other appropriate Recorded instrument indicates such a Lot or Parcel is subject to Assessments.

1.28.5 All other property designated as Exempt by Declarant from time to time in Declarant's sole discretion.

1.29 **"FHA"** shall mean the Federal Housing Administration.

1.30 **"First Mortgage"** shall mean any 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.

1.31 **"First Mortgagee"** shall mean the holder of any First Mortgage.

1.32 **"Funds"** shall mean all funds and property collected and received by the Association from any source.

1.33 **"Government Property"** shall mean all land and improvements owned by or dedicated to a public or governmental agency or authority for so long as the public or governmental agency or authority is the owner or beneficiary thereof, except for land or improvements, or both, owned and/or operated by a public or governmental agency or authority acting in a proprietary capacity, or owned and occupied as a residence by a Single Family.

1.34 **"Land Use Classification"** shall mean a classification of a portion of the Covered Property, as set forth in a Tract Declaration, restricting development to the applicable classification(s), which may include residential or commercial uses.

1.35 **"Limited Common Areas"** shall mean all areas of any Parcel now or hereafter designated on a Recorded Tract Declaration or a Recorded subdivision plat as an area to be used in common by the Owners or Occupants of a particular Parcel or subdivision, but not by all Owners or Occupants of the Covered Property, which areas shall also be maintained by and at the expense of the Owners or Occupants of such Parcel or subdivision, or by a homeowners or similar Subsidiary Association established with respect to such Parcel or subdivision.

1.36 **"Lot"** shall mean:

1.36.1 an area of real property within the Covered Property designated as a "Lot" on any Recorded subdivision plat; or

1.36.2 a Condominium Unit.

1.37 **"Maintenance Assessments"** shall mean the Assessments, if any, levied by the Board pursuant to Section 8.7 and Sections 11.2 through 11.5 hereof.

1.38 **"Master Development Plan"** shall mean any conceptual or site development plan at any time in effect for the Covered Property and any Annexable Property, if annexed, or any portion thereof, and approved by the governmental jurisdiction having the authority to approve and regulate master plans for planned area communities located within the Covered Property, as the same may be amended from time to time in Declarant's sole and absolute discretion, subject to necessary governmental approvals.

1.39 **"Member"** shall mean any Owner, including Declarant.

1.40 **"Membership"** shall mean the amalgam of rights and duties of Owners, including Declarant, with respect to the Association.

1.41 **"Net Acre"** shall mean a gross acre of forty-three thousand five hundred sixty (43,560) square feet, less any dedicated rights-of-way for public roads, public and private drainage ways, and public utilities, and, except as the context may otherwise clearly indicate, less Common Areas accepted for ownership by the Association, if any. Net Acre computations shall be rounded to the nearest one-hundredth.

1.42 **"Non-Developer Owner"** shall mean any Owner who is not a Developer Owner.

1.43 **"Occupant"** shall mean:

1.43.1 each Tenant who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Tenant who reside on the Covered Property;

1.43.2 each Owner who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Owner who reside on the Covered Property; and

1.43.3 such other person or persons as the Board, in its absolute discretion, may designate.

1.44 **"Owner"** shall mean (a) a record holder of beneficial or equitable title, and legal title if legal title has merged with the beneficial or equitable title, to the fee simple interest in any Lot or Parcel, including without limitation Declarant and all Developer Owners or (b) the purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale, or any similar contract governed by A.R.S. § 33-741, et seq. The foregoing does not include persons or entities who hold an interest in any Lot or Parcel merely as security for the performance of an obligation, or a lessee or tenant of an Owner as defined herein, or a purchaser or buyer under any executory contract of sale which has not been fully consummated with a Recorded deed to the purchaser.

1.45 **"Parcel"** shall mean any parcel of land within the Covered Property, including a Parcel designated for Residential Apartment Development Use or Residential Condominium Development Use, other than Common Areas to be owned in fee title 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. Notwithstanding the foregoing, a Parcel shall cease being a Parcel upon Recording of a subdivision plat or a declaration of condominium creating Lots or Condominium Units in regard thereto. In the case of the staged development of a Parcel having a Land Use Classification of Cluster Residential Use, Single Family Residential Use or Residential Condominium Development Use, those areas of such Parcel not yet covered by a Recorded subdivision plat or declaration of condominium creating Lots shall continue to be a Parcel for purposes of this Declaration.

1.46 **"Party Wall"** shall have the meaning set forth in Section 4.4 hereof.

1.47 **"Person"** shall mean a corporation, partnership, limited liability company, joint venture, individual, trust or any other legal entity.

1.48 **"Record", "Recording", "Recordation" and "Recorded"** shall mean placing or having placed a document of public record, or the act of recording, in the Official Records of Yavapai County, Arizona.

1.49 **"Residential Apartment Development"** shall mean a development comprised of Apartment Units and the surrounding area which is intended to be integrated and under the same ownership.

1.50 **"Residential Condominium Development"** shall mean a development comprised of Condominium Units and the surrounding Limited Common Areas.

1.51 **"Single Family"** shall mean a group of persons living together and maintaining a single nonprofit housekeeping unit together with their domestic servants.

1.52 **"Single Family Parcel"** shall mean a Parcel designated in the Master Development Plan or in a Tract Declaration as having a Single Family Residential or Cluster Residential Land Use Classification.

1.53 **"Special Assessments"** shall mean the assessments, if any, levied by the Board pursuant to Section 8.4 hereof.

1.54 **"Special Use Fees"** shall mean any fees charged by the Association for use of the Common Areas pursuant to Sections 3.1 and 8.1 and other provisions hereof.

1.55 **"Subsidiary Association"** shall mean an Arizona nonprofit corporation, its successors and assigns, established for the purpose of administering and enforcing the provisions of any Tract Declaration.

1.56 **"Taking"** shall mean condemnation by eminent domain or sale or other transfer under threat of condemnation.

1.57 **"Tenant"** shall mean a Person occupying any part of the Covered Property under any type of rental agreement, whether such rental agreement is within the definition set forth in A.R.S. § 33-1310(11) or otherwise.

1.58 **"City"** shall mean the City of Prescott, Arizona.

1.59 **"Tract Declaration"** shall mean any declaration of covenants, conditions and restrictions or like instrument Recorded after the Recording of this Declaration in regard to one or more Parcels, or portions thereof, or group(s) of Lots, by the Owner of such Parcels or portions thereof, or group(s) of Lots, which shall in all cases be subject to approval of Declarant, consistent with and subordinate to this Declaration.

1.60 **"Transition Date "** means that date on which the Association holds its first meeting at which a Board is elected by the Owners. Such meeting shall take place within ninety (90) days after the Declarant gives management of the Association to the Owners. The specific "Transition Date" shall be the date of the first meeting of the Members of the Association after the transfer by the Declarant.

1.61 **"VA"** shall mean the United States Veterans' Administration.

1.62 **"Visible From Neighboring Property"** shall mean, with respect to any given object, that such object is or would be visible to a Person six feet tall, standing at ground level on neighboring property (including Common Area) six feet back from the property line of the neighboring property, provided, however, that the Design Review Committee 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 Design Review Committee shall be binding in that regard, subject to any appeal rights to the Board.

ARTICLE 2 PROPERTY AND PERSONS BOUND BY THIS DECLARATION

2.1 General Declaration. Declarant desires to see the Covered Property developed in accordance with Declarant's Master Development Plan, as may be amended from time to time in the sole and absolute discretion of Declarant, and to dedicate or convey to other Persons the Lots and Parcels or other portions of the Covered Property. As portions of the Covered Property are developed, Declarant, without obligation, intends to Record one or more Tract Declarations that will, among other things, create Lots or Parcels, designate Land Use Classifications, designate Common Areas and Limited Common Areas, and establish such Additional Covenants as may be appropriate for the respective portions of the Covered Property. Declarant hereby declares that all of the Covered Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Tract Declarations applicable thereto, as amended or modified from time to time. Notwithstanding the preceding sentence, except as expressly provided herein, property owned by or dedicated to a governmental agency or to the public shall not be subject to this Declaration, provided, however, that any restrictions imposed in this Declaration upon the Owners and Occupants concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Covered Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Covered Property. This Declaration shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Covered Property and their successors in interest. Nothing in this Declaration or in any Tract Declaration shall be construed to prevent Declarant from modifying any part of the Master Development Plan with respect to property as to which a Tract Declaration has not been Recorded, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot, a Parcel, or Common Areas. This Declaration and any subsequent Tract Declarations are subject to amendment or modification by Declarant and that such amendment or modification by Declarant may materially change the character of the Covered Property and may alter, increase or decrease the burdens or benefits of Owner or Occupant pursuant to this Declaration.

2.2 Owners and Occupants Bound. Upon the Recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Parcel or Lot to or from such Owners or Occupants.

2.3 Association Bound. Upon the incorporation of the Association, this Declaration shall be binding upon and benefit the Association, and its successors and assigns.

2.4 Subsidiary Associations Bound. Upon the incorporation or other formation of any Subsidiary Association, this Declaration shall be binding upon and shall benefit such Subsidiary Association, and its successors and assigns.

2.5 Government Property. Notwithstanding any other provision herein, Government Property comprising a park, or other property owned in fee by a town, city, or county, shall not be deemed encumbered by any of the provisions of this Declaration. Owners

shall, however, be restricted in their use of Government Property consisting of roads (i.e., the parking, signage, and other regulations hereof).

2.6 Disclaimer of Representation. While the Declarant and the Developer have no reason to believe that any of the restrictive covenants contained in this Declaration are, or may be, invalid or unenforceable, the Declarant and Developer make 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 as to the validity and enforceability thereof, and by accepting a deed to a Lot or Parcel, agrees that the Declarant, the Developer, and the Association shall have no liability with respect thereto.

2.7 Views Not Guaranteed. Although certain Lots or Parcels in the Development currently may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot or Parcel. Neither the Declarant, the Developer nor the Association makes any representation or warranty whatsoever, express or implied, concerning the view that any Lot or Parcel will have whether as of the date this Declaration is Recorded or thereafter. Any view that currently exists for a Lot or Parcel may be impaired or obstructed by further construction within or outside the Development, including, without limitation, by construction of improvements (including landscaping) by the Developer or the Association, construction by third parties and by the natural growth of landscaping. No third party, including without limitation any broker or sales person, has any right to bind the Declarant, the Developer, or the Association with respect to the preservation of any view from any Lot or Parcel or any view of a Lot or Parcel from any other property.

ARTICLE 3 EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREAS

3.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, which nonexclusive easement 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 Areas so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

3.1.1 The right of the Association pursuant to this Declaration to charge reasonable Special Use Fees for the use of the Common Areas. The Special Use Fees shall be set by the Board from time to time, in its absolute 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 Areas so that all of the costs of operating such selected Common Areas are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other persons utilizing such selected Common Areas;

3.1.2 The right of the Association to suspend the voting rights and the rights to use and enjoyment of the Common Areas (other than roadways) of any Owner or Occupant, as the case may be:

- (a) for any period during which an Assessment remains delinquent;
- (b) for a period not to exceed thirty (30) days for any infraction of this Declaration, a Tract Declaration, the Association Rules, or the Design Guidelines, or for so long as the Owner remains in violation, whichever is longer; or
- (c) for successive thirty (30) day periods if any such delinquency or infraction is not corrected during any preceding suspension period.

3.1.3 The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Areas; and,

3.1.4 The right of the Association to regulate use of the Common Areas in accordance with this Declaration, and to mortgage or convey portions of the Common Areas with the affirmative vote or written consent of Owners representing at least two-thirds (2/3rds) of the total votes held by the Membership, except that notwithstanding the foregoing, at any time during the pendency of the Class B Membership Declarant shall have the right to convey, or cause the Association to convey, portions of the Common Areas without the consent or vote of any other Person or Member, should Declarant determine that such conveyance or transfer is in the best interests of the Covered Property and that the said interests of the Association are best served by disposing of same. Any sale or disposition of the Common Areas shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof. The rights of the Association hereunder with respect to the Common Areas shall include conveyance and dedication to the public of roads, streets, drainageways, culverts, and sewer facilities, none of which shall require the approval of any Owners or Members of the Association. In addition, the Association shall have the right without a vote of the Members to dedicate to the public any private park, school site or open space, including any trails.

3.2 **Delegation of Use.** Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his/her rights of use and enjoyment in the Common Areas to the members of his/her family or occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules, provided, however, that the Association Rules may restrict or limit the use of Common Areas by Tenants, guests and invitees.

3.3 **Waiver of Use.** No Owner shall be exempted from personal liability for Assessments, nor shall the Owner's Lot or Parcel be released from liens or charges arising under this Declaration or any Tract Declaration, by waiver of any rights of use or enjoyment of the Common Areas.

3.4 **Acceptance of Certain Common Areas.** In the course of development and sale of Lots or Parcels within the Covered Property, fee title to land which is, or is to be, restricted to use as future common area (the "Restricted Tracts") may be transferred by Declarant to Persons acquiring fee title to one or more Parcels or to a governmental or quasi-governmental entity as determined by Declarant. In such event, and notwithstanding that fee title to the Restricted Tracts may be held by Persons other than the Association (or Declarant), such Restricted Tracts, unless designated as common area of a Subsidiary Association, shall upon acceptance by the

Association, if such is the case, become Common Areas hereunder upon the platting thereof. If such areas become Common Area of the Association, all Owners and Occupants shall have the easements, licenses and rights to the use and enjoyment of such Restricted Tracts as with respect to the other Common Areas generally, subject in all cases to the provisions of this Declaration and the Association Rules. In the event such areas are accepted by the Association, and the Person owning fee title to any such Restricted Tract transfers such fee title to the Association, the Association shall accept such fee title so long as, at the time of and in connection with such transfer, the Person transferring title to the Association provides to the Association, at no expense to the Association, a standard coverage owner's policy of title insurance in an amount reasonably acceptable to the Association (but in no event less than the minimum amount, if any, required for such policies by VA or FHA, if VA or FHA are involved in the insurance or guarantee of loans affecting portions of the Covered Property), issued by a title insurance company authorized to transact such business in the State of Arizona, insuring that the Association is the owner of fee title to the transferred Restricted Tract subject only to such liens or other matters as may be approved by the Association, which approval shall not be unreasonably withheld. The Association shall be conclusively deemed reasonable in withholding its approval of any monetary liens or encumbrances affecting title to any Restricted Tract proposed to be transferred to the Association.

3.5 Temporary Sign Easement. Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon and across those portions of the Common Areas adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property, and otherwise promoting the Covered Property or any property owned by Declarant. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities within the area of the Master Development Plan, including the Covered Property and Annexable Property, but in no event later than forty (40) years after the date this Declaration is Recorded.

3.6 Exclusive Use and Benefit Easements. On certain Common Areas, including those along streets and thoroughfares, patio walls may with the approval of the Design Review Committee be constructed partially within the Common Area at varying minor distances from the adjacent Lot line, including for purposes of enhancing the visual appearance of the property and avoiding monotony of design that would otherwise be inherent in straight runs of patio walls or other yard walls, including perimeter walls. Portions of the Common Areas may be located on the Lot side of any such wall (each, an "Easement Area"). Each Easement Area may adjoin and be contiguous to a Lot (each, a "Dominant Lot"). In the case of a Dominant Lot, there shall be a perpetual exclusive use and benefit easement over the Easement Area abutting that Dominant Lot for the use, benefit and enjoyment of that Owner (each, an "Easement"). The Easements contemplated hereby are to be minor and limited in scope, and shall only be for the purposes stated. Each Easement shall be deemed to exist upon approval by the Design Review Committee of the improvements depicting the encroachment, but only after completion of construction in accordance with such approval, and no consent of the Owner of the Dominant Lot shall be required. Each Easement runs with the land and is appurtenant to the abutting Dominant Lot and may not be sold, transferred or otherwise conveyed apart therefrom. The Association will have no possession or control of the Easement Areas. Each Easement Area must be possessed,

controlled, maintained and insured by the Owner of the abutting Dominant Lot and not by the Association. Any separate insurance maintained by the Association is excess and non-contributory. Each Owner of a Dominant Lot shall indemnify, protect, defend and hold harmless the Association for, from and against any and all losses, costs, claims, actions, damages, expenses and liabilities of any kind whatsoever arising from or in connection with the Easement Area abutting that Owner's Dominant Lot.

3.7 Blanket Easements. There is hereby created a blanket easement in favor of Declarant and its assigns upon, over and under each Lot, each Parcel, the Common Areas and the Limited Common Areas for ingress to, and egress from, all portions of the Covered Property and the installation, replacement, repair and maintenance of all utility equipment and service lines and systems (including electric, gas, telephone, cable, water and sewer), as such equipment, lines and systems are installed in connection with the initial development of Lots, Parcels, Common Areas and Limited Common Areas and the construction of buildings thereon; provided that such easements shall be specifically and permanently described and fixed by Recorded instrument either:

(a) at the time a subdivision plat, approved as required by this Declaration, is Recorded with respect to the portion of the Covered Property to be served or burdened by such easement(s), as applicable; or

(B) within one hundred twenty (120) days following approval, as required by this Declaration and by the appropriate governmental agencies, of a site plan for the portion of the Covered Property to be served or burdened by such easement(s), as applicable.

3.8 Declarant's Use of Covered Property.

3.8.1 Declarant shall have the right to maintain sales or leasing offices, management and business offices and model Dwelling Units throughout the Covered Property (including in any building designated as a clubhouse or recreational amenity) and to maintain advertising, model and directional signs on the Common Areas while the Declarant is currently selling or intending in the future to sell Lots or Parcels in the Covered Property. Declarant reserves the right to place models, management, business, sales and leasing offices in any Dwelling Units owned by Declarant and on any portion of the Common Areas in such number, of such size and in such locations as Declarant deems appropriate, and to utilize the Common Areas for other business purposes, including, without limitation, marketing functions.

3.8.2 Declarant may from time to time relocate models, management and business offices and sales and leasing offices to different locations within the Covered Property. Upon the relocation of a model or management, business, sales or leasing office located on Common Areas, Declarant may remove all personal property and fixtures therefrom owned by Declarant.

3.8.3 So long as Declarant is currently selling or intending in the future to sell Lots or Parcels in the Covered Property, Declarant shall have the right to reserve parking spaces on the parking areas that are part of the Common Areas for use by prospective Lot

or Parcel purchasers or lessees, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities on or about the Covered Property. Declarant also reserves the right to enter all or a portion of the Common Areas for purposes of showing the Common Areas to prospective purchasers or lessees.

3.8.4 Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Covered Property that has not been conveyed to of the Association. Declarant reserves the right to remove from the Covered Property any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

3.9 **Temporary Sales Easement.** Declarant hereby reserves to itself and its agents, successors and assignees a temporary non-exclusive blanket easement over, upon and across the Covered Property for purposes of ingress, egress and parking in connection with construction, display, maintenance, sales and exhibit purposes in connection with the erection of structures and sale or lease of Lots or Parcels within the area of the Master Development Plan. Such easements may be used by Declarant or its successors, assigns, guests and invitees for any purpose whatsoever relating to sales, advertising and promotional activities in relation to the Covered Property or in relation to land marketed and developed as part of the same general community. The easement reserved hereby shall expire and terminate when Declarant is no longer selling and has no intent to sell in the future Lots or Parcels within the area of the Master Development Plan, including the Covered Property and Annexable Property, but in no event later than forty (40) years after the date this Declaration is Recorded.

ARTICLE 4 DESIGN REVIEW COMMITTEE

4.1 **Organization of Design Review Committee.** The Board shall establish a Design Review Committee and shall adopt the procedural rules and regulations for the performance of the duties of the Design Review Committee. The Design Review Committee shall be organized as follows:

4.1.1 **Powers and Duties.** The Design Review Committee shall have all of the powers, authority, and duties conferred upon it by this Declaration or by the Articles, Bylaws, or Association Rules, or by any Tract Declaration or similar Recorded instrument approved in advance by the Board. Without limiting the generality of the foregoing, it shall be the duty of the Design Review Committee to consider and act upon all proposals or plans submitted to it pursuant to the provisions of this Declaration or the Design Guidelines, including approval of all landscaping to be planted or placed upon the Covered Property, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration. The Design Review Committee shall have the right from time to time to assign certain of its powers, authority and duties hereunder to one or more Subsidiary Associations.

4.1.2 **Committee Composition.** The Design Review Committee shall consist of three (3) members; provided, however, that the number of members may be increased or decreased at any time by a vote of the Board. A member shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent or employee of Declarant.

4.1.3 Alternate Members. In the event of the absence or disability of a regular member or members of the Design Review committee, the remaining regular members, even though less than a quorum, may designate an alternate member to act as a substitute regular member of the Design Review Committee so long as any one or more regular members remain absent or disabled.

4.1.4 Term of Office. Unless a member of the Design Review Committee has resigned or been removed, his or her term of office shall be for a period of two (2) years, or until the appointment of his or her respective successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members of the Design Review Committee who have resigned, been removed or whose terms have expired may be reappointed.

4.1.5 Appointment and Removal. Except as hereinafter provided, the right to appoint and remove all regular and alternate members of the Design Review Committee at any time shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Design Review Committee by the Board except by the vote or written consent of at least fifty-one percent (51%) of the members of the Board.

4.1.6 Resignations. Any regular or alternate member of the Design Review Committee may at any time resign from the Committee by giving written notice thereof to the Board.

4.1.7 Vacancies. Vacancies on the Design Review Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Design Review Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

4.1.8 Control By Declarant. Notwithstanding the foregoing, in order to enhance the aesthetic and economic value of the Covered Property and to maintain uniformity of architectural and landscaping standards throughout the Covered Property, until the Class B Membership ceases, or so long as Declarant owns a single Lot or Parcel within the Covered Property, whichever is later, Declarant shall have the right:

- (a) to appoint and remove all regular and alternate members of the Design Review Committee; and
- (b) to supplement and amend the Design Guidelines, as deemed necessary by Declarant.

To better assist in the review and administration of submittals pursuant to the Design Guidelines, until such time as Declarant relinquishes its control of the Design Review Committee it may, in its sole and absolute discretion, appoint an advisory committee, of a size and composition determined solely by Declarant, and composed of representatives of Developer Owners.

4.2 **Multiple Committees.** The Board may, at its discretion, create more than one Design Review Committee and give each such Committee the authority to perform duties delegated to it by the Board with respect to specific portions of the Covered Property.

4.3 **Meetings and Compensation of Design Review Committee.** The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the members of the Design Review Committee or written consent of a majority of the members of the Design Review Committee shall constitute the act of the Design Review Committee. The Design Review Committee shall keep and maintain a written record of all actions taken by it. Although members of the Design Review Committee shall not be entitled to compensation for their services, consultants hired by such Committee, if such are authorized by the Board, may be, entitled to compensation at the discretion of the Board. Notwithstanding the foregoing, for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.1.8 hereof, members of the Design Review Committee may be paid for their services at the discretion of the Board.

4.4 **Design Guidelines.** Subject to the written approval of the contents thereof by the Declarant for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.1.8 hereof, the Board shall adopt, and may from time to time amend, supplement and repeal, the Design Guidelines, which may be different for various portions of the Covered Property. The Design Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for Design Review Committee review, standards for development within the Covered Property, fees and charges for the review of plans and other materials submitted, and such further content as may be appropriate. The Design Guidelines shall include, without limitation, provisions regarding:

4.4.1 the size of Single Family Dwelling Units;

4.4.2 architectural design, with particular regard to the harmony of the design with surrounding structures and topography;

4.4.3 placement of buildings;

4.4.4 landscaping design, content and conformity with the natural character of the Covered Property;

4.4.5 requirements concerning exterior color schemes, exterior finishes, and materials, and requirements concerning yard and building ornaments, recreational equipment, exterior lighting and exterior furniture, and other items or improvements Visible From Neighboring Property;

4.4.6 signage and mailboxes; and

4.4.7 perimeter and screen wall design and appearance.

The Design Guidelines may elaborate upon types of acceptable plants and shrubs and may contain rules for the treatment and control of plants which may pose a public or private nuisance. The Design Guidelines shall have the same force and effect as the Association Rules.

In addition to the foregoing, the Design Guidelines shall govern the placement of common or shared walls or fences between Lots or Parcels ("Party Walls"). Unless otherwise approved by the Design Review Committee, rear and side yard walls built upon any Lot shall be placed upon the dividing line between adjacent Lots and shall become Party Walls. Any Owner attaching to a Party Wall built by an adjacent Owner shall reimburse such Owner for one-half the reasonable cost of the shared portion of the wall to which attachment is made. The Design Review Committee shall in all cases have the discretion to mandate that patio or yard walls be Party Walls on the Lot line, and may mandate that attachment be made by an adjacent Owner. The Design Guidelines may further amplify upon the provisions hereof.

4.5 Obligation to Obtain Approval.

4.5.1 No building, fence, wall, pool, roadway, driveway, or other structure or improvement, nor any excavation, grading, landscaping, or other work, shall be commenced, erected, repaired, or maintained within the Covered Property, nor shall any exterior addition or change or alteration be made to or in any such structure or improvement (irrespective of whether any improvement, change or alteration is affixed to an exterior surface), including, without limitation, awnings, rolling shutters (interior or exterior) patio covers, antennas, exterior walls, fences, or the color of any structure or improvement on any Lot or Parcel, except in compliance with plans and specifications therefor that have been submitted to and approved by the Design Review Committee and any applicable Subsidiary Committee in accordance with this Declaration and the Design Guidelines. All approvals must be in writing, and no Owner may rely on oral statements, nor shall any member of the Design Review Committee be deemed to have apparent authority.

Notwithstanding the foregoing, no review or approval by the Design Review Committee shall be deemed to represent concurrence, acquiescence, approval, or evaluation of code compliance or proper construction or engineering techniques, nor shall the Design Review Committee, by reason of its function or processes, in any way be responsible for defects in construction, design or other aspects of development or improvement of real property. Each Owner fully releases and discharges the Design Review Committee from all liability and responsibility in any way relating to or arising out of the nature of improvements built following plan submittal, review and approval. Without limitation, the Design Review Committee shall in no way be deemed to have condoned any particular construction method or means, including, but not limited to, any grading, filling, compaction, drainage facility, engineering design or feature, or other matter.

4.5.2 No trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with this Declaration and the Design Guidelines.

4.5.3 No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the Design Review

Committee, shall be permitted without approval of the change or deviation by such Committee.

4.6 **Waiver.** The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

4.7 **Liability.** Neither Declarant nor the Design Review Committee nor any member thereof 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; or

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

4.8 **Appeal to Board.** Except as provided in this Declaration, any Owner or Occupant who submitted plans or specifications to the Design Review Committee for improvement, alteration, landscaping or other change to such Owner's Lot or Parcel, and who is aggrieved by a decision of the Design Review Committee may appeal the decision to the Board in accordance with procedures to be established in the Design Guidelines. In the event the decision of the Design Review Committee is overruled by the Board on any issue or question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, for so long as Declarant retains control over the Design Review Committee as provided in herein, no Owner or Occupant shall have the right to appeal any decision of the Design Review Committee to the Board and the decisions of the Design Review Committee shall be final.

4.9 **Fee.** The Board may establish reasonable processing fees, and classifications of fees, to defer the costs of the Design Review Committee in considering any requests for approvals submitted to the Design Review Committee or for appeals to the Board, which fees shall be paid at the time the request for approval or review is submitted. The Board may set fees for custom homes, production homes, and commercial buildings in different amounts, and may adjust such fees from time to time.

4.10 **Inspection.** Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Parcel, after reasonable notice to the Owner or Occupant 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 Design Guidelines, 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, the Land Use Classifications shall be fixed in a Tract Declaration which may be 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. Each Tract Declaration shall be construed as a supplement to this Declaration and fully a part hereof as if all of the provisions thereof were set forth herein; provided, however, that if any provision of a Tract Declaration is inconsistent with any provision of this Declaration, the provision of this Declaration shall control.

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 written approval of the Declarant or, if Declarant has waived and relinquished such right, of the Board, which approval shall be evidenced on the Recorded instrument, and without such approval such Tract Declaration or further covenants, conditions, restrictions, and easements, or any amendments or modifications thereto, shall be 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 shall reasonably require. A Tract Declaration shall not be amended except as specifically permitted by this Declaration or by such Tract Declaration.

The Land Use Classifications contemplated as of the date of this Declaration are:

5.1.1 "Cluster Residential Use," consisting of Lots with Dwelling Units including those types of single family residential housing arrangements known as "townhouses," "clustered housing," "zero-lot line housing," and similar arrangements (but not including Condominium Units), together with related amenities;

5.1.2 "Residential Apartment Development Use," which shall include congregate care or similar facilities;

5.1.3 "Residential Condominium Development Use";

5.1.4 "Single Family Residential Use";

5.1.5 "Common Areas";

5.1.6 "Other Residential Uses";

5.1.7 "Commercial Areas";

5.1.8 "Other Areas or Uses" as determined by Declarant in Declarant's sole discretion.

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of the Land Use Classifications and specific permitted and prohibited uses of the real property within a particular Land Use Classification shall be set forth in the respective Tract Declarations. Such uses may at any time be amended to permit other uses, provided the provisions of the Tract Declaration dealing with amendment have been met. In the event of any ambiguity or dispute regarding the nature and scope of permitted and prohibited uses of the real property within a particular Land Use Classification, the provisions of Section 17.1 hereof shall apply. Notwithstanding the foregoing listing, Declarant shall not be obligated to establish within the Covered Property each of the uses listed herein, nor shall such listing prohibit the establishment by Declarant of other Land Use Classifications. Without limitation, certain commercial uses may be established near or adjacent to the Covered Property, and the Covered Property may or may not actually contain any commercial uses. Should Declarant determine that a particular commercial use should be a portion of the Covered Property, Declarant may annex such land as a part of the Covered Property and establish a Tract Declaration therefor, setting forth uses, voting rights, assessment obligations, and other restrictions.

Each Owner acknowledges the existence of the Master Development Plan and understands that the initial plan for the land, including land which may never be annexed, includes certain adjacent uses such as commercial sites, public or quasi-public uses, governmental sites or facilities, public open space or park areas and other areas, all subject to change at the discretion of the Declarant.

A Lot or Parcel shall, prior to being used or improved, be defined and limited to a specific development type or land use by a Tract Declaration approved by Declarant in accordance with the provisions hereof. Declarant may require imposition of special conditions in a Tract Declaration in any case where deemed appropriate in the sole and absolute discretion of said Declarant, and may require adequate provisions for assessments, maintenance of property and improvements and such other provisions as are deemed proper. Should for any reason a Parcel be subdivided and developed or partially developed prior to Declarant's Recordation of a Tract Declaration establishing the Land Use Classification therefor, then Declarant may later Record the appropriate Tract Declaration with the consent of the Owner of the property in question, and until such time the Land Use Classification shall be deemed to be Single Family Residential Use.

No Condominium Parcel or subdivision containing common area may be developed nor shall a Tract Declaration therefor be approved, unless an incorporated owners association is established for the maintenance and repair of common elements or common area, except in cases where the Association may elect to accept ownership of same.

Declarant may approve of other Land Use Classifications in the case of additional property annexed under the purview hereof, in which case the Tract Declaration shall set forth such Land Use Classification.

5.2 Covenants, Conditions, Restrictions, and Easements Applicable to All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels in the Covered Property included within the designated Land Use Classifications, and to the Owners and Occupants thereof:

5.2.1 Single Family Residential Use. No structure whatsoever, other than one private, Single Family residence, together with a private garage and one (1) guest residence, and other appurtenances as approved by the Design Review committee shall be erected, placed or permitted on any Lot designated in a Tract Declaration as having Single Family Residential Use Land Use Classification. No mobile homes, manufactured homes or prefabricated homes shall be permitted unless approved in writing by Declarant and set forth in an amendment hereto.

5.2.2 Plat Notes. In addition to the restrictions contained herein, the Covered Property shall be subject to all restrictions and limitations set forth on the Recorded plat for Granite Dells Estates, as it may be amended from time to time.

5.2.3 Prohibited Uses. The following uses are prohibited:

- (a) any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the City or any other governmental entity having jurisdiction over the Covered Property.

5.2.4 Temporary Occupancy and Temporary Buildings; Outside Storage. No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the construction process, a temporary building or structure may be erected, installed or maintained on a Lot or Parcel with the prior written approval of the Design Review Committee, including the approval of the structure's location and appearance. Such temporary structures shall be removed immediately after completion of such construction, and that portion of the Lot or Parcel from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semifinished products or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article 4. Any permitted outside storage shall be screened as approved by the Design Review Committee, provided, however, that during construction of improvements on any Lot or Parcel, necessary construction materials and supplies may be stored on the Lot or Parcel without the need for a solid visual barrier providing such materials and supplies are kept in neat order considering the construction activities. The Design Review Committee is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

5.2.5 Repair of Buildings. No building or improvement on any Lot or Parcel shall be permitted to fall into disrepair and each such building and 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 building or improvement. In the event any building or improvement is damaged or destroyed, then, subject to approval in accordance with Article 4, such building or improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs within

the time limits established by the Board, the Board and its agents and representatives are empowered 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 in the same manner as 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.

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

(a) 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;

(b) portions of the Common Areas adjacent to an Owner's Lot or Parcel and which are on the Lot's or Parcel's side of any wall erected on the Common Areas; and,

(c) public right-of-way area; between sidewalks (or bicycle paths or equestrian trails) and the street curb 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, 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. All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) 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. Landscaping may be required to be placed on a Lot or Parcel within certain time frames established by the Design Review Committee. 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, the Association is empowered to enter upon the Lot or Parcel, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as assessments.

5.2.7 Diseases and Insects. No Owner or Occupant shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

5.2.8 Antennas and Dishes; Solar Devices. Except as approved in writing by the Design Review Committee, no television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any residential Lot or upon any improvements thereon, except that this prohibition shall not apply to Declarant's rights pursuant to Section 5.2.25 hereof, nor to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not Visible From Neighboring Property, or integrated with the Residence and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

No solar heating or cooling equipment or other visible solar device may be installed or erected without approval of the Design Review Committee, which shall give due regard to state law restricting the limitation of such devices.

5.2.9 Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for, quarry, mine, remove or transport any oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, except in each case as Declarant shall specifically approve. No well may be drilled or operated on any Lot unless owned and operated by a city, town or public service corporation and approved by the Board. This provision shall not prohibit the operation of wells on Common Area if approved either by Declarant or the Board.

5.2.10 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot or Parcel without the prior written consent of the Design Review Committee unless they are not Visible from Neighboring Property.

5.2.11 Party Walls. Except as hereinafter provided, the rights and duties of Owners of Party Walls shall be as follows:

(a) 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;

(b) if a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests or family, the Owner or

Occupant as the case may be, shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided in Section 5.2.11 hereof;

(c) 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, guests or family, 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 immediately rebuild and repair such Party Wall, such expense to 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;

(d) 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 Design Review Committee; whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final;

(e) notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (i) between Common Areas and Lots or Parcels; or, (ii) situated on Common Areas within or adjacent to a Lot or Parcel, the Owners and Occupants of such Lots or Parcels shall be responsible, at their expense, for all maintenance, repair, painting and replacement thereof. Further, unless otherwise approved in writing by the Board, any wall situated generally between a Lot or Parcel and Common Areas shall be situated entirely upon such Lot or Parcel, and not upon the Common Areas, immediately adjacent to the boundary line between the Lot or Parcel and the Common Areas; and

(f) Section 5.2.11 hereof does not and is not intended to control or relate to Party Walls between Residential Condominium Developments or Condominium Units.

5.2.12 Overhead Encroachments. No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of eight (8) feet, without the prior written approval of the Design Review Committee. The Association shall have the right to trim any offending tree, shrub or planting.

5.2.13 Trucks, Trailers, Campers, Boats and Motor Vehicles. Except as may be allowed in a Tract Declaration, Design Guidelines, Arizona statutes or as authorized in writing by the Design Review Committee, no motor vehicle, motor home, mobile home, trailer, camper shell, detached camper, boat, boat trailer, snow mobile, jet ski or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed, repaired or stored on any Lot or Parcel or on any street so as to be Visible From Neighboring Property (including but not limited to any Common Areas, Limited Common Areas or street).

Notwithstanding Section 5.2.13(a) hereof: 1) no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, repaired or, if inoperable, stored upon any Lot, Parcel or street so as to be Visible From Neighboring Property; and 2) the Design Review Committee may in its discretion adopt rules to allow the parking of recreational vehicles, motorhomes, campers and other operative vehicles in rear yard areas provided there is adequate access, and further provided that there is compliance with screening, height and other requirements of the Design Guidelines.

5.2.14 Health, Safety and Welfare. In the event uses of, activities on, or facilities upon or within a Parcel or Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or Occupants, the Board or the Design Review Committee may make rules restricting or regulating their presence.

5.2.15 Incidental Uses. Subject to the provisions of any applicable Tract Declaration, the Board may approve, regulate and restrict incidental uses of property within a Land Use Classification. By way of example and not of limitation, the Board may permit: private roadways; tennis and/or swimming clubs intended primarily for the benefit of all or certain Owners or Occupants; tennis courts; swimming pools; and other recreational facilities.

5.2.16 Window Coverings. No exterior window covering, awning, rolling shutter or reflective covering may be placed, or permitted to remain, on or adjacent to any window of any building, structure or other improvement without the prior written approval of the Design Review Committee. No interior window screening may be of highly reflective material.

5.2.17 Lot or Parcel Coverage. The percentage of each Lot or Parcel which may be covered by buildings within a Residential Land Use Classification (as well as the location of such buildings and other improvements on each Lot or Parcel) shall be subject to the review and approval of the Design Review Committee, as part of the Design Review Committee's review of plans for proposed improvements on such Lot or Parcel pursuant to this Declaration, but shall in no event violate City ordinances and regulations in effect from time to time or impose onerous conditions on any Owner thereby frustrating the development of an allowed use.

5.2.18 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.

5.2.19 Utility Lines and Connections. All utility wires, lines, pipes, conduits, facilities, connections and installations, including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer, shall be installed and maintained underground or concealed in, under, or on structures approved in writing in advance by the Design Review Committee, except that Declarant, in its discretion, may install or cause to be installed certain overhead utility lines and facilities if made reasonably necessary due to existing overhead facilities. All transformers shall be placed

on or below the surface of the Lot or Parcel. Temporary aboveground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of the Design Review Committee.

5.2.20 On-Site Grading and Drainage. No water shall be drained or discharged from any Lot or Parcel, or building thereon, except in accordance with: (a) the master drainage study, if any, including any amendments thereto, approved by the appropriate governmental agency(ies) and the Design Review Committee (or other drainage study approved by such Committee, if no such master drainage study exists); and (b) grading plans approved by the Design Review Committee in accordance with Article 4 and applicable City ordinances.

5.2.21 Building Exteriors. All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved in accordance with Article 4. All materials used for the exterior of the buildings shall be quality, long-life, low maintenance materials.

5.2.22 Restrictions on Further Subdivision, Property Restrictions, and Rezoning.

(a) All proposed site plans, subdivision plats, condominium declarations, easements or further covenants, conditions or restrictions, or applications for rezoning, variances or use permits for any Lot or Parcel, or any portion of a Lot or Parcel, other than those owned by Declarant, must be approved in writing by the Declarant. Declarant may relinquish its right of approval herein reserved, in which case the Board shall succeed to such right of approval. All submittals shall be reasonably reviewed and approved. The required approval shall be evidenced by the signature of the Declarant or of an authorized representative of the Board, as applicable. Except for property owned by the 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, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Declarant or, if applicable the Board, unless such subdivision, conveyance or transfer: (i) is made in connection with the development of one or more pads, lots or other subdivisions of a Parcel for commercial or industrial use; and, (ii) is made in accordance with a site plan for such Lot or Parcel approved by the Board.

(b) No site plan, subdivision plat, condominium declaration, or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits, shall be made, filed, submitted to, or Recorded with City or any other governmental authority or agency unless it has first been approved as provided in this Section 5.2.22. No changes or modifications shall be made in any such documents, instruments or applications once they have been approved as provided in this Section 5.2.22 (whether requested by the City or otherwise) unless such changes or modifications have also been approved in advance, in writing, in accordance with this Section 5.2.22. This Section 5.2.22 does not apply to

portions of the Covered Property owned by Declarant or to site plans, subdivision plats, condominium declarations, or further covenants, conditions, restrictions or easements, or applications for rezoning, variances or use permits, made, filed, submitted or Recorded by Declarant and pertaining to portions of the Covered Property owned by Declarant.

5.2.23 Permissible Encroachments. Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by a Developer Owner may from time to time encroach in minor degree upon the Common Areas or other Lots in the Covered Property. Such encroachments caused incidentally and which are minor in scope and degree, such as those caused by good faith survey error, and where removal of improvements would cause gross economic waste, shall be deemed acceptable. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments is conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

5.2.24 No Commercial Use. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on or in any residential Lot or Parcel except as set forth in this subparagraph. The Declarant and a Developer Owner may maintain sales offices, construction offices and sales models on the Covered Property and an Owner or Occupant may carry on a "Home Occupation" as provided in the Design Guidelines.

If the Board determines that the Home Occupation violates the provisions of the Design Guidelines, then the Board shall have the authority to require that the Home Occupation in question cease immediately.

Notwithstanding any provision of this Declaration, Declarant shall not be prohibited from erecting or maintaining on the Covered Property wireless antennas and devices for the transmission or reception of data, communication, sound, video or other signals, whether or not such facilities serve more than just the Covered Property, or may be considered "hub" facilities under the federal Telecommunications Act of 1996, or amendments thereto, or under any regulations or rulings of the Federal Trade Commission. Such activities shall not constitute prohibited activity hereunder.

5.2.25 Leasing. The entire (but not less than all) area of a Dwelling Unit or Apartment Unit may be leased to a Single Family Tenant from time to time by the Owner, subject to the provisions of this Declaration, any applicable Tract Declaration and the Association Rules.

5.2.26 Animals. Except as may be permitted in a Tract Declaration or as approved in writing by the Design Review Committee, no animal, livestock, poultry or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot or Parcel and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any permitted pet shall be Visible From Neighboring Property. Notwithstanding the foregoing, no permitted pets may be kept on or in any Lot

or Parcel which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is a Tenant, guest or invitee. Persons walking pets shall remove the pet's excrement from the Covered Property.

5.2.27 Garbage. No garbage or trash shall be allowed, stored or placed on a Lot or Parcel except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and Parcel and shall not be allowed to accumulate thereon. The Board may also determine to require that the Association or individual Owners shall employ one or more of a limited number of waste management or pick-up companies to retrieve waste and refuse from the Covered Property or portions thereof. The Board may establish regulations as to the times and duration that waste containers may be visible from Neighboring Property for pick-up, and may determine and regulate the type and appearance of waste containers.

5.2.28 Machinery and Equipment. Except as may be authorized by the Design Review committee or in any Trust Declaration, no machinery or equipment of any kind shall be placed, operated, stored or maintained upon any residential Lot or Parcel, except:

- (a) during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a building, appurtenant structures or improvements thereon;

- (b) that which Declarant or the Association may require for the development, operation and maintenance of the Covered Property or other portions of the Covered Property; or

- (c) personal items ordinarily associated with the Covered Property such as lawn mowers, tools, gardening equipment and the like.

5.2.29 Signs. No signs of any nature shall be placed on the Common Areas except with respect to Association or Common Areas matters as approved by the Board and except as allowed by Declarant. No signs of any nature shall be placed on any Lot or Parcel, except:

- (a) signs required by legal proceedings;

- (b) a maximum of two (2) identification signs for Dwelling Units, as approved by Design Guidelines;

- (c) "for sale" and "for lease" signs, and subdivision, condominium and apartment identification signs, the nature, number, location, content and design of which shall comply with the Design Guidelines; and

- (d) such other signs as the Design Review Committee shall approve.

5.2.30 Parking. It is the intent of Declarant to eliminate on-street parking as much as possible within the Covered Property. No vehicle shall be parked on any street or

roadway shown on any map of dedication, or similar instrument, Recorded by Declarant unless otherwise expressly provided either:

- (a) in or on such Recorded map of dedication or similar instrument showing the street or roadway;
- (b) in a separate Recorded instrument executed by Declarant; or
- (c) in a Recorded Tract Declaration.

Vehicles shall be kept in garages to the extent of available room, other designated parking areas or as otherwise required in a Tract Declaration. No Owner shall convert a garage into a living area without approval of the Design Review Committee, which approval may be denied in the sole discretion of such committee, nor may a garage be used as a storage area thereby precluding the parking of vehicles. No garage doors shall be permitted to remain open except for a temporary purpose. The Association may adopt additional parking restrictions including the establishment of fines and assessments for their violation. The Association may also delegate its authority to enforce such parking restrictions to the appropriate Subsidiary Association. Nothing in this Section 5.2.30 prohibits temporary street parking for special events or temporary large gatherings where parking in individual Lots is inadequate.

5.2.31 Commercial Vehicles. Except as may be permitted by the Design Review Committee or the Design Guidelines, no vehicle shall be permitted to park on a Lot of Parcel if the exterior of the vehicle contains or exhibits any signage relating to a commercial enterprise or commercial activity that is visible from the exterior of such vehicle (and the vehicle is not kept in an approved enclosed garage). The foregoing restrictions shall not apply to vehicles parked within an enclosed structure approved by the Design Review Committee, nor to commercial vehicles of contractors, Developer Owners and others working on the Covered Property.

5.2.32 Model Homes, etc. Nothing contained herein or in any applicable Tract Declaration shall prohibit the construction and maintenance of model homes, model apartments, sales offices, apartment rental offices, property management offices and parking incidental thereto by Declarant and Developer Owners, provided, however, that the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and local ordinances of the City. No other model homes or offices shall be maintained on the Covered Property by persons other than the Declarant and Developer Owners, unless approved in writing by the Declarant or by the Board.

Notwithstanding the foregoing, unless Declarant should in writing grant special permission to the contrary, the Board shall have the right to require that an Owner (other than Declarant) limit its sales and management offices and model homes to locations in subdivisions or areas where it continues to own one or more Lots.

5.3 Covenants, Conditions and Restrictions Applicable to Commercial Use.

Should any portion of the Covered Property be permitted by Declarant to be used for a nonresidential use, Declarant may Record Additional Covenants as a part of a Tract Declaration

therefor, and may establish in such Tract Declaration special provisions for voting rights, assessment obligations, and other pertinent restrictions under the purview of the Association.

5.4 **Variances.** The Board may, at its sole discretion, grant variances from the restrictions set forth in Article 5 hereof or in any Tract Declaration if the Board determines that:

5.4.1 either (a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; or (b) a change of circumstances has rendered the particular restriction obsolete; and

5.4.2 the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants. The request for a variance must be made in writing and be accompanied by adequate supporting documentation. The Board shall approve or disapprove the request, in writing, as promptly as possible under the particular circumstances. All decisions of the Board shall be final and nonappealable.

5.4.3 Notice is hereby given that the Board's determination to grant a variance may materially change the character of the Covered Property and may alter, increase or decrease the burdens or benefits of Owner or Occupant pursuant to this Declaration.

5.5 **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent, restrict or otherwise limit the construction, installation or maintenance by Declarant or Declarant's agents during the period of development and construction on the Covered Property of improvements, landscaping or signs deemed necessary or convenient by Declarant, in Declarant's sole discretion, to the development or sale of property within the Covered Property. Declarant may assign, in whole or in part, its rights and privileges under this Section 5.5, and Declarant may grant, in its sole discretion, any similar rights and privileges to any Developer Owner.

ARTICLE 6 ORGANIZATION OF ASSOCIATION

6.1 **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

6.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During the pendency of the Class B Membership, the Board shall consist of at least three (3) directors who shall be Members or individuals designated by a corporate, partnership or other non-individual Member, and a majority of the directors may be appointed by the Declarant during the pendency of the Class B Membership (without in any way limiting the right of Declarant to elect the remaining directors). Commencing with the first annual meeting of the Members when there is no longer a Class B Membership, the Board shall consist of, and the voting Members shall elect, not more than seven (7) directors, but never an

even number, all of whom must be Members, or an individual designated by a corporate, partnership or other non-individual Member.

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 the Class B Members to the Class A Members.

6.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules in regard to the Covered Property. The Association Rules may restrict and govern the use of the Common Areas, 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, the Common Areas and the Limited Common Areas. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association.

6.4 Personal Liability. No Board member, officer, committee member, employee or representative of the Association, or the Association, shall be personally liable to any Owner, 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 6.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.5 Subsidiary Associations. In the event any homeowners or similar Subsidiary Association is formed by a Developer Owner of a Parcel or portion thereof, or group of lots, such Subsidiary Association's governing documents shall not be effective unless they have been approved in advance by the Board and they specify that such governing documents, such Parcel or portion thereof, or group of Lots, the Subsidiary Association, and the Subsidiary Association's members are subject and subordinate to this Declaration, the Design Guidelines, the Articles, the Bylaws and the Association Rules. The Board shall not disapprove any such governing documents unless, in the Board's sole discretion, either:

6.5.1 they are inconsistent or in conflict with this Declaration, the Articles, the Bylaws, the Association Rules, the Design Guidelines and any applicable Tract Declaration; or

6.5.2 they fail to contain the specification required by the preceding sentence.

Subsidiary Associations shall have the right to own, operate and maintain Limited Common Areas and shall not be required to dedicate same as Common Area hereunder. The Board may delegate to a Subsidiary Association the responsibility and duty of billing and collecting for some or all of the Assessments.

ARTICLE 7 MEMBERSHIPS AND VOTING

7.1 **Members.** Every Owner of a Lot or Parcel shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues.

7.2 **Membership is 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.

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

7.4 **Voting.** No Members other than the Declarant shall have any voting rights until the Transition Date. After the Transition Date, the Association shall have the following two classes of voting Memberships:

7.4.1 **Class A.** Class A Memberships shall be all Memberships except for the Class B Memberships held by the Declarant and each Owner shall be entitled to one vote for each Class A Membership held by such Owner.

7.4.2 **Class B.** Class B Memberships shall be all Memberships held by the Declarant before and after the Transition Date. The Declarant shall be entitled to three (3) votes for each Membership held by the Declarant. The Class B Memberships shall expire when the Declarant no longer owns any property within the Covered Property.

7.5 **Right to Vote.** 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 thereof, for example, the Recorded deed showing the name of the Owner of such Lot or Parcel. The vote for each Member must be cast as a single unit. Fractional votes shall not be allowed. In the event that a Lot or Parcel is owned by more than one Person and such Owners are unable to agree 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 thereto 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 (1) Person casts or attempts to cast a vote for a particular Lot or Parcel all such votes shall be deemed void.

7.6 **Members' Rights.** Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the Design Guidelines.

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 Arizona law. Any attempt to make a nonapproved 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.

ARTICLE 8 ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Assessment Lien; Personal Obligation of Lot or Parcel Owner.

Each Owner, other than Declarant, by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or 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 Special Use Fees and the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Special Use Fees and the Assessments, 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. Special Use Fees and the Assessments, together with interest thereon and the costs 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 Special Use Fees or Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time when such Special Use Fees or Assessments become due and payable.

8.2 Annual Assessments. The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth herein. The Annual Assessments levied by the Association shall be used to promote the recreation, health and welfare of the Owners and Occupants, to enhance the quality of life within the Covered Property, to preserve and enhance the value of the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Areas, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the provisions hereof.

8.3 Rate of Assessment. The amount of the Annual Assessments, Maintenance Assessments and Special Assessments shall be established by the Board, in its sole discretion.

8.3.1 Obligation of Developer Owner. In the Board's sole discretion, the Board, in writing may require the Developer Owner of a Lot or Parcel to pay only fifty percent (50%) of the Annual Assessments and Special Assessments for such Lot or Parcel until the earlier of twenty-four (24) months from the date of the initial conveyance by Declarant of the Lot or Parcel (or the Parcel from which such Lot was established) to the first Developer Owner thereof.

In the case of a site plan approved by the Design Review Committee for a Parcel which contemplates the construction of more than one building, the Parcel shall, for the purposes of this Section 8.3.1 only, be deemed subdivided into the number of sub-parcels equal to the number of approved buildings set forth on the approved site plan.

If a Developer Owner ceases to qualify for the reduced rate as provided herein during any Assessment Period, that Developer Owner shall immediately notify the Board, in writing, of its change in status. If an Owner of a Lot or Parcel who qualifies to pay a reduced Assessment amount as provided for in this Declaration, fails to notify the Board of the date the payment amount is to be increased, that Owner shall still be liable for the full amount of the Assessment as of the date it was required to pay the full amount of the Assessment and such Owner's failure to notify the Board shall not relieve the Owner of liability for the full amount of the Assessment. The Association may at any time request that any Developer Owner which is being assessed at a reduced rate furnish the Association with evidence that such Developer Owner continues to be qualify for a reduced assessment rate under this Section 8.3.1. If such Developer Owner fails to produce such evidence within thirty (30) days of the date of the Association's request, or if the evidence which is furnished is unsatisfactory, in the Board's reasonable discretion, to demonstrate that Developer Owner's continued qualification for the reduced assessment rate, the Board may terminate the reduced assessment rate as of a date reasonably deemed appropriate by the Board.

8.3.2 Obligation of Non-Developer Owner. A Non-Developer Owner (not including Declarant) is not entitled to the reduced assessment rates set forth herein and a Developer Owner only qualifies for such reduced rates if it is a Developer Owner of the specific Lot or Parcel being assessed.

8.4 Special Assessments. In addition to the Annual Assessments, the Board may levy a special Assessment a) for the purpose of constructing improvements to Common Area; b) correcting an inadequacy in the Association's accounts; c) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owed by the Association; or d) defraying other extraordinary expenses or paying other expenses the Board may deem appropriate. The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments shall be approved at any annual or special meeting of the Members with the approval of two-thirds of the total votes of Owners voting in person or by proxy.

8.5 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, each purchaser of a Lot or Parcel upon which the construction of improvements is complete, as evidenced by a certificate of occupancy or similar instrument which allows the Lot or Parcel to be used as a residence or in trade or business, shall pay to the Association immediately upon becoming the Owner of a Lot or Parcel a sum equal to twenty-five percent (25%) of the then-current Annual Assessment applicable to such Lot or Parcel (the "Working Capital Fund Contribution"). A Working Capital Fund Contribution shall continue to be payable upon each subsequent sale of a Lot or Parcel.

Funds paid to the Association pursuant to this Section 8.5 may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration and the Articles and Bylaws. Payments made pursuant to this Section 8.5 shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.6 Notice and Quorum for Any Action Authorized Under This Article. Written notice of any meeting of the Members of the Association called for the purpose of conducting a vote required under this Article shall be sent to all Owners not less than fifteen (15) days nor more than fifty (50) days in advance of such meeting. At such meeting, the presence of Members or of proxies entitled to cast twenty percent (20%) of all the votes of the Members (without segregation as to class of Member) shall constitute a quorum. If the required quorum is not present, another meeting shall be called for such purpose, subject to the foregoing notice requirements, and the required quorum at the subsequent meeting shall be one-half of the quorum required at the initially scheduled meeting. The subsequent meeting shall be held within sixty (60) days following the date of the initially scheduled meeting.

8.7 Maintenance Assessments and Fees. In addition to any Annual Assessment or Special Assessment, the Board has the authority to levy and collect Maintenance Assessments for costs and expenses arising out of any special characteristics or needs of a particular Lot or Parcel, or if the Owner of a Lot or Parcel contracts with the Association for the Association to provide particular maintenance services to such Owner's Lot or Parcel. Furthermore, if any common expense is caused by the misconduct of an Owner of a Lot or Parcel, his/her tenants, guests, invitees or licensees, including any misconduct leading to the imposition of any fine or penalty against such Owner, or expense by the Association to bring such Owner into compliance with the provisions hereof, the Association may assess that expense exclusively against that Owner and such Owner's Lot or Parcel, but in such events only after notice and an opportunity for a hearing, including as required by law. Maintenance Assessments may be enforced in the same manner as Annual Assessments.

Assessments for improvement, operating and maintenance expenses may also include Community Enhancement Fees, Recreational Fees and other improvement, operating and maintenance fees as determined necessary by and in the amounts determined by the Association. Such assessments may be enforced in the same manner as Annual Assessments. Fees for resale transfers of Lots may be charged by the Association in accordance with Arizona Statute.

8.8 Fines and Penalties. If any Owner, his or her family, or any licensee, invitee, tenant or lessee violates the provisions hereof, or any provision of any of the Design Guidelines or other rules of the Association, the Board after providing the Owner with notice of the violation and an opportunity for a hearing, may levy a fine upon the Owner and may suspend the violator's right to use the Common Area. The Board may impose a fine for each day a violation continues after the Board has provided the Owner with written notice of the violation. The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within fifteen (15) days of notice of the due date may be collected in the same manner as delinquent Assessments.

8.9 Annual Assessment Period. Except as otherwise provided herein, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence upon conveyance of the first Lot or Parcel from Declarant to a Developer Owner, and shall terminate on December 31 of the same year. The Annual 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 may accelerate the entire Annual Assessment or other Assessment Late fees and interest may be added to the delinquent amount of any Assessment and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law. Delinquent payments shall, to the extent permitted by law, apply first to delinquent Assessments, including late fees and other sums due, and then to accrued interest and attorneys fees and other legal costs, including litigation related expenses and expert witness fees, if any.

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, which procedures may include delegating to the applicable Subsidiary Association the authority and obligation of billing and collecting some or all of 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. No Assessment Lien shall be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice thereof prior to the commencement of such foreclosure or enforcement. The notice shall be addressed to the Owner at the address of the Owner on the records of the Association. 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 nonrefunded prepayments made by a prior Owner. In case the Owner of a Lot or Parcel having a right to pay a reduced payment amount as provided herein fails to notify the Board at such time as the payment amount should be increased, such Owner shall nonetheless be liable for the increased amount of the Assessment and such Owner's failure to notify the Board shall not relieve such Owner of the liability for such increased Assessment.

8.11 Collection Costs and Interest on Delinquent Amounts. Any Delinquent Amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within thirty (30) days after notice thereof, addressed to the Owner at the address of the Owner on the records of the Association, is given. In addition, the Delinquent Amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, or the then prevailing interest rate on loans insured by FHA or VA. The Owner shall be liable for all costs, including but not limited to attorneys' fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount.

8.12 Statement of Payment. Upon receipt of a written request therefor from any Owner or Resident, the Board, within a reasonable time thereafter, shall issue to the requesting party a written statement stating that as of the date of that statement:

8.12.1 all Assessments and Special Use Fees (including collection fees, if any in regard thereto), have been paid with respect to such Owner's or Occupant's Lot or Parcel;
or

8.12.2 if such have not been paid, the amount then due and payable.

The Association may make a reasonable charge for the issuance of such statement. Any such statement shall be conclusive and binding with respect to any matter set forth therein.

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. Notwithstanding the foregoing, any Owner of Exempt Property, except Government Property comprising a park, and except for Common Area of the Association and property of a utility company, shall nevertheless remain subject to reasonable architectural review and approval by the Design Review Committee, and the owners thereof shall be required to submit plans and specifications for approval of improvements, structures and landscaping as required herein.

8.14 Declarant's Exemption. Anything in this Declaration to the contrary notwithstanding, the Declarant shall not be liable for and shall not be required to pay Assessments upon Lots or Parcels owned by Declarant. Nor shall Declarant 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 the Declarant by foreclosure or deed in lieu of foreclosure, unless such Lot is a Completed Lot.

8.15 Deficiency. Declarant and any Developer Owner of a Lot or Parcel agree to pay, on a pro rata basis, as reasonably determined by the Board, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Areas, but only up to the full Annual Assessment for each such Lot or Parcel actually owned by Declarant or Developer Owner. A shortfall or deficiency shall exist if current ordinary expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that Declarant shall not be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year, nor for any shortfall or deficiency incurred after expiration of the Class B Membership. Declarant may at any time at its sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay up to the full Annual Assessment for each Lot or Parcel owned by Declarant instead. Declarant's obligation to contribute toward a deficiency as provided herein is supported by a lien on Declarant's Lots and Parcels.

Should Declarant assign its rights to the exemption from Assessments as provided herein, whether such assignment be in whole or in part, then the assignees shall, in the case of any deficiency as described herein (and meeting the conditions set forth herein), be liable for its ratable share of same, up to the full amount of the Annual Assessment for each Lot or Parcel owned, and not more. In addition, such assignees' exemption, if any, shall expire with respect to any Lot or Parcel upon which construction of improvements has been completed.

In no event shall Declarant be required to contribute to any deficiency after the termination of the Class B Membership.

8.16 **Borrowing.** The Association may, with the consent of the Declarant, borrow funds in regard to funding any shortfall or deficiency of operation and maintenance of the Association and Common Areas or other operation or maintenance costs of the Association.

ARTICLE 9 ENFORCEMENT AND THE ASSESSMENT LIEN

9.1 **Association Remedies to Enforce Assessments.** If any Owner fails to pay any Assessments or Special Use Fees when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking either or both of the following actions, concurrently or separately (and by exercising either remedy the Association does not prejudice or waive its right to exercise the other remedy):

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

9.1.2 Foreclose the Assessment Lien against the appropriate Lot or Parcel in accordance with then prevailing Arizona law, and the Association may bid for and purchase the Lot or Parcel at any foreclosure sale.

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 which hereafter are or may be imposed on any Lot or Parcel except as provided by law. Without limitation, the Assessment lien is junior to:

9.2.1 the lien of any First Mortgage encumbering the Lots and Parcels; and

9.2.2 the lien for taxes or other governmental assessments which 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 First Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien only as to payments which 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 theretofore becoming due nor from the Assessment Lien arising in regard thereto. In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a Person obtaining an interest in a Lot or Parcel 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.

ARTICLE 10 USE OF ASSOCIATION FUNDS

10.1 **Use of Association Funds.** In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all Funds to the performance of the duties and obligations of the Association and the Board hereunder, or under the Articles and Bylaws, and toward such other ends and purposes as the Board may reasonably determine. The Funds may be used, among other things, to insure, acquire, construct, alter, maintain, provide and operate, in any manner whatsoever, any and all land, properties, improvements, services, projects, programs, studies and systems, within the Covered Property and the Common Areas, which may be necessary, desirable or beneficial to the interests of the Owners and the Occupants.

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

10.3 **Association's Rights in Spending Funds from Year to Year.** The Association shall not be obligated to spend in any year all Funds 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 Annual Assessment in the succeeding year if a surplus exists from a prior year.

ARTICLE 11 MAINTENANCE

11.1 Common Areas and Public Rights-of-Way.

11.1.1 **Areas of Association Responsibility.** The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, provided, however, that the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas located on or within Lots or Parcels unless:

(a) such landscaping or structures are intended for the general benefit of the Owners and Occupants; and

(b) the Association assumes in writing the responsibility for such maintenance and such instrument is Recorded.

Common Areas 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. 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 to such public rights of way.

The Association shall also maintain any license or easement areas near or adjacent to the Covered Property, including any facilities therein, which may consist of entry monuments, special entry features, gated entries and similar features, and the Association shall assume the obligations thereunder.

11.1.2 **Delegation of Responsibilities.** In the event any Recorded subdivision plat, Tract Declaration, Recorded map of dedication, Recorded deed restriction or this Declaration permits the Association to determine whether Owners of certain Lots or Parcels shall be responsible for maintenance of certain Common Areas or public rights-of-way, the Board shall have the sole discretion to determine whether the Association or an individual Owner or group of Owners should be responsible for such maintenance, considering cost, uniformity of appearance, location and other relevant factors. The Board may also cause the Association to contract with others for the performance or such maintenance and other obligations of the Association and, in order

to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as the Association and the Owner may agree.

11.1.3 Standard of Care. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas 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 Areas.

11.2 Assessment of Certain Maintenance Costs. In the event the need for maintenance or repair of areas maintained by the Association is caused through the willful or negligent act or omission of any Owner (or of any other person for whom such Owner is legally responsible under applicable state law), the cost of such maintenance or repair shall be added to and become a part of the Assessments to which such Owner and such Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. Any charges to be paid by an Owner in connection with a maintenance contract entered into by the Association shall also become a part of such Assessments and be secured by the Assessment Lien.

11.3 Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot, Parcel, or Apartment Unit is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot, Parcel or other area, or is used in a manner which violates this Declaration or any applicable Tract Declaration, or in the event the Owner of any Lot or Parcel fails to perform such Owner's obligations under this Declaration, any applicable Tract Declaration, the Association Rules, or the Design Guidelines, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot or Parcel that unless specified corrective action is taken within a specified time period the Association, at such Owner's cost, may take whatever action is appropriate to compel or itself cause compliance including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association is hereby authorized and empowered, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys' fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. The provisions of this Section 11.3 shall not apply to Declarant nor to Lots or Parcels owned by Declarant.

11.4 Excess Maintenance Costs. In the event any use of, or activity on, any Lot or Parcel causes the maintenance or repair costs incurred or to be incurred by the Association with respect to any portion of the Common Areas to be substantially greater than those costs which would typically be incurred for such portion of the Common Areas whether such use or activity is of a continuing nature or an isolated event, the Board may, by resolution, make a finding to such effect, of the amount of the excess costs incurred or expected to be incurred by the Association and of the method of determining such excess costs. Upon the adoption of such a resolution, the amount of such excess costs at any time or from time to time incurred by the Association for the reasons specified in the resolution shall be added to and become a part of the Assessments for which the Owner of any Lot or Parcel upon which such use or activity is

conducted is liable and all of such Assessments shall be secured by the Assessment Lien on such Owner's Lot or Parcel.

11.5 Certain Maintenance Activities. Where the Association has undertaken, by virtue of its obligations hereunder or pursuant to any special contract executed by the Association, the responsibility to maintain, repair, replace, repave, resurface or operate private streets or private roadways or any open space, recreational or other common facilities or any guard gates, the Board, if in its discretion determines that such private streets or private roadways (or appurtenant equipment and facilities) or open space, recreational or other common facilities or guard gates, exclusively or disproportionately benefit the Owners of Lots within a particular subdivision of other Lots or Parcels, may assess all (or such appropriate portion as the Board shall determine in its discretion) of the cost of such maintenance, repair, replacement, repaving, resurfacing and operation solely against the Lots within such subdivision (and the respective Owners thereof) as additional Maintenance Assessments, which shall be assessed equally against each of the Lots within such subdivision and shall be secured by the lien for Assessments as described herein. Such additional Maintenance Assessments may also include amounts to establish and fund reserves as the Board may deem reasonable and appropriate. One of the purposes of this Section 11.5 is to establish a mechanism whereby various facilities intended and designed solely or primarily for use by the Owners of Lots within a particular subdivision may be owned and maintained by the Association at the sole and primary expense of such Owners rather than require formation of a Subsidiary Association to undertake such ownership and maintenance.

ARTICLE 12 RIGHTS AND POWERS OF ASSOCIATION

12.1 Rights, Powers and Duties of the Association. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with 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 Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

12.2 Rules and Regulations. In addition to the right to adopt, amend and repeal rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, the Articles, and the Bylaws. Upon adoption, the Association Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

12.3 Association's Rights of Enforcement. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration and all Additional Covenants that shall have been executed pursuant or subject to the provisions of this Declaration or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. If the Association shall fail or refuse to enforce the provisions of this Declaration or the

Additional Covenants 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.

12.4 Enforcement Methods and Means. The Association may enforce the provisions hereof at law or in equity, including, but not limited to:

12.4.1 Imposing reasonable monetary penalties after notice and an opportunity to be heard, 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 guests, invitees and Tenants or residents;

12.4.2 Suspending an Owner's right to vote;

12.4.3 Suspending any services provided by the Association to an Owner or the Owner's property if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;

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

12.4.5 Requiring an Owner at the Owner's expense to remove any offending condition, structure or Improvement on the Owner's property, and further requiring the said Owner to restore his or her property to the condition in which it previously existed, without such action being a trespass;

12.4.6 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 this Declaration from continuing to perform and further activities on the Covered Property;

12.4.7 Towing vehicles which are parked in violation of the provisions hereof; and

12.4.8 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.

12.5 Contracts with Others. Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant, 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 the other contracting party, 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 is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association be for a term not exceeding one year and must be terminable, without penalty, by the Association for cause at any time and without cause upon no more than sixty (60) days notice.

ARTICLE 13 INSURANCE

13.1 Association's Insurance Requirements. The Association shall purchase and maintain at all times the following types of insurance, but only to the extent reasonably available and reasonably priced, and any other insurance the Association deems appropriate:

13.1.1 Commercial General Liability and Property Insurance. Commercial general liability insurance covering bodily Injury and property damage liability insurance covering all Common Area maintained by the Association, if any, and all other areas under the jurisdiction or control of the Association, excluding the Lots and Parcels. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or of any other Owners.

The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use to the Properties. Coverage shall be for at least one million dollars (\$1,000,000.00) combined single limit.

Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Common Area maintained by the Association; legal liability arising out of lawsuits related to employment contracts of the Association; and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Such coverage shall also include standard directors and officers coverage in amounts determined reasonably necessary by the Board, insuring the members of the Board, the officers of the Association, and any property managers to the extent the Board shall so determine.

13.1.2 Insurance of Common Area. Fire and other hazard insurance covering improvements constructed on the Common Area. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in the area of Prescott, Arizona.

Such policies of property insurance shall contain a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis

without deduction for depreciation, an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement," if possible. The Association shall also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and coverage on personal property owned by the Association.

If the Common Area or any portion thereof is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage for improvements on the Common Area has been made available under the National Flood Insurance Program, then such a policy of flood insurance shall, if deemed necessary by the Board, be obtained on the Common Area in an amount at least equal to the lesser of:

(a) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(b) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

13.1.3 Worker's Compensation Insurance. Worker's Compensation insurance to the extent necessary to comply with any applicable laws.

13.1.4 Fidelity Insurance. At the Board's discretion, fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, that is, in no event, less than one and one-half times the insured's estimated annual operating expenses and reserves, and provide for at least thirty (30) days' notice to the Association before cancellation or substantial modification thereof. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

13.2 Exceptions. The foregoing insurance and endorsements shall be maintained only to the extent available and reasonably priced and, without limitation, the Board of Directors may elect to dispense with certain endorsements if, in the discretion of the Board of Directors, it is determined that the cost of such endorsements is excessive or the coverage not reasonably available.

13.3 Waiver of Subrogation; Claims Against Declarant, etc. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, each Developer Owner, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees and a provision, if reasonably available in the discretion of the Board, preventing any cancellation or modification thereof, except upon reasonable written notice to the insureds.

Liability insurance specified herein shall name as separately protected insureds Declarant, the Association, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property.

To the extent that each such policy will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Declarant, the Board, and each Developer Owner and such other persons or entities named in said insurance policies, and against the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

13.4 Association's Insurance Premiums a Common Expense. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and Parcels, and all such insurance coverage obtained by the Board shall be written in the name of the Association.

13.5 Insurance for Residences and Lots. All Owners shall at their own expense obtain insurance for their Dwelling Units, Lots, and Parcels insuring against fire, accident and casualty, which insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of any such loss or losses.

13.6 Use of Insurance Proceeds. In the event of damage or destruction by fire or other casualty to any Dwelling Unit, Lot or other property covered by insurance written in the name of an individual Owner, said Owner shall use any insurance proceeds for the repair of the damaged property.

ARTICLE 14 DISPUTE RESOLUTION

14.1 Consensus for Association Action.

14.1.1 Except as provided in this Article, the Association may not commence a legal proceeding or an action without the approval of at least two-thirds of the votes of the Members eligible to vote. This Article shall not apply, however, to (i) actions brought by the Association to enforce governing documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

14.1.2 Prior to the Association or any Member commencing any proceeding to which Declarant or any Developer Owner is a party, including but not limited to an alleged defect of any improvement, Declarant and each Developer Owner shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

14.2 Alternative Method for Resolving Disputes. Declarant, its officers, directors employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Members of the Association; any Developer

Owner, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 14.3 hereof (singularly, "Claim," and collectively, "Claims") to the procedures set forth in Section 14.4 hereof.

14.3 Claims. Unless specifically exempted herein, all claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of this Declaration, or to the Articles or Bylaws ("Governing Documents") or the rights, obligations and duties of any Bound Party under the Governing Documents; (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of Section 14.4 hereof.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 14.4 hereof:

(a) any suit by the Association against any Bound Party to enforce the provisions hereof pertaining to assessments, fines or charges (other than against Declarant);

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions hereof;

(c) any suit between or among Owners, which does not include Declarant, a Developer Owner or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(d) any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above identified in this Section 14.3 may be submitted to the alternative dispute resolution procedures set forth herein.

14.4 Mandatory Procedures.

14.4.1 Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party" or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) the proposed remedy; and

(d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

14.4.2 Negotiation and Mediation.

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), the parties agree to mediate their dispute in a mutually agreeable manner.

(c) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall, issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth herein. In such event the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

14.4.3 Binding Arbitration.

(a) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim in accordance with Arizona arbitration statutes. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(b) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys'

fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(c) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

14.5 **Amendment of Article.** Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty (20) years from the effective date of this Declaration.

ARTICLE 15 TERM; AMENDMENTS; TERMINATION

15.1 **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 ninety percent (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.

15.2 **Amendments.** The covenants and restrictions of this Declaration shall run with and bind the land until December 31, 2030, after which they shall be automatically extended for successive periods of ten (10) years. Except as hereinafter provided, the Declarant and/or the Developer may, at any time prior to the Transition Date, amend this Declaration, which amendment may materially change the character of the Development or the burdens on and the benefits to the Owners. After the Transition Date, the Owners, by a vote of seventy-five percent (75%) of the Owners, either in person or through a written consent, may amend this Declaration, except as hereinafter provided. No amendment to this Declaration shall affect the rights, exclusions, or exemptions granted to the Declarant or the Developer without the Declarant's or the Developer's prior written consent, which consent shall be granted or withheld at the sole discretion of the Declarant or the Developer. No amendment may be made that allows for the right to amend this Declaration as it pertains to the rights, exclusions, or exemptions granted to the Declarant or the Developer without the Declarant's or the Developer's prior written consent, which consent shall be granted or withheld at the sole discretion of the Declarant or Developer. Any amendment shall be signed by the Declarant and the Developer or their successors or by the president of the Association and must be Recorded. Except as otherwise set forth herein, the Association may not be dissolved unless some other entity has agreed to assume the operation and maintenance responsibility of the Association.

Any amendment during such time as Declarant is a Member of the Association shall require the written approval of the Declarant.

In addition to the foregoing, Declarant shall have the right, so long as it owns any Lot or Parcel, to amend this Declaration of its own volition, and without the requirement of any further

consent or approval if such amendment is to correct errors or eliminate ambiguities, and to make changes designed to further the intent of this instrument by further elaborating on existing powers, privileges and restrictions in cases where correction, clarification or elaboration is warranted.

A Tract Declaration may be amended as provided in such Tract Declaration, but only with the consent of Declarant so long as Declarant owns a single Lot or Parcel in the Covered Property. Thereafter, a Tract Declaration may be amended as provided therein, and with the approval of the Board.

15.3 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institution. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration or a Tract Declaration as may be requested or required by the FHA, VA or any other Agency with whom Declarant elects to do business as a condition precedent to such Agency's approval of this Declaration or an applicable Tract Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot or Parcel or purchasing loans secured thereby. Any such amendment shall be effected by Declarant Recording an amendment duly executed and acknowledged by Declarant specifying the Agency or the lending institution requesting the amendment and setting forth the requested or required amendment(s). Recordation of such amendment shall be deemed conclusive proof of the Agency's or institution's request or requirement and such amendment, when Recorded, shall be binding upon all of the Covered Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of planning and development of the Covered Property. If any amendment requested or required pursuant to the provisions of this Section 15 deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions which shall be binding upon the Covered Property and Owners without a vote of the Owners.

ARTICLE 16 ANNEXATION AND WITHDRAWAL OF PROPERTY

16.1 Annexation by Declarant. Declarant may, at its sole discretion and without the approval, assent, or vote of the Association or other Owners, from time to time until forty (40) years after Recordation of this Declaration, annex to the Covered Property any Annexable Property or any portion or portions thereof. To effect such annexation, a Tract Declaration covering the Annexable Property (or the applicable portion or portions thereof) shall be executed and Recorded by Declarant. The Recordation of such Tract Declaration shall constitute and effectuate the annexation of the Annexable Property (or the applicable portion or portions thereof) described therein, making such Annexable Property (or the applicable portion or portions thereof) and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association. In addition to the foregoing, and notwithstanding any decision not to annex the additional property or any portion thereof, Declarant may grant easements for ingress, egress, utilities, and other purposes for the benefit of such Annexable Property, all on terms deemed by Declarant to be reasonable.

16.2 Annexation by Owners. The Association may, from time to time, annex to the Covered Property additional property ("Annexation Land") provided that such annexation has

been approved by the Owners possessing at least seventy-five percent (75%) of the total votes then entitled to be cast by the Membership (both Classes, not each Class separately) with or without a meeting. To effect such annexation, a Tract Declaration covering the Annexation Land shall be executed by the President or Vice-President of the Association and attested to by the Secretary of the Association, and executed by the owner of the Annexation Land. The Recordation of such Tract Declaration shall constitute and effectuate the annexation of the Annexation Land described therein, making such Annexation Land and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association.

Any annexation during the pendency of the Class B Membership shall have the written approval of the Class B Member and, for a period of ten years after Recording hereof, the Declarant as well. Absent such approval, any such annexation shall be deemed void.

16.3 Tract Declarations. The annexations authorized hereunder shall be made by Recording a Tract Declaration, in like fashion as for any Parcel originally subject to this Declaration. A Tract Declaration may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof). In no event, however, shall any such Tract Declaration revoke or conflict with this Declaration or any Tract Declaration. If the Annexable Property (or the applicable portion or portions thereof) is annexed, the number of Parcels shall be adjusted accordingly, and the Annexable Property (or applicable portion or portions thereof) shall thereupon become fully a part of the Covered Property subject to all provisions of this Declaration, including without limitation the provisions regarding Assessments.

16.4 Withdrawal of Covered Property. Declarant may, at its sole discretion and without the approval, assent, or vote of the Association or other Owners or Members, from time to time until forty (40) years after Recordation of this Declaration, withdraw any real property subject to this Declaration by executing and Recording a Notice of Withdrawal, making reference to this Declaration, and specifically describing the withdrawn property. The property so described shall be deemed completely excluded from this Declaration and shall no longer be a part of the Covered Property. Declarant may, in connection therewith, cancel any Tract Declaration for the land withdrawn.

Notwithstanding the foregoing, except as otherwise provided in the applicable Declaration of Withdrawal, withdrawal of any portion or portions of the Covered Property will not be effective until the Owner of the property to be withdrawn has paid all unpaid Assessments applicable to such property, prorated to the date of withdrawal.

It is specifically understood that this right of withdrawal may be exercised in Declarant's sole and absolute discretion, and that once withdrawn, none of the provisions hereof shall apply to or encumber the land. Notice is hereby given that Withdrawal of Covered Property may materially change the character of the Covered Property and may alter, increase or decrease the benefits or burdens of Owner or Occupant pursuant to this Declaration. Further, Declarant may cause the Association to grant and convey such easements as may be necessary to benefit such land withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

ARTICLE 17 MISCELLANEOUS

17.1 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, including without limitation, the land use restrictions contained herein and in any Tract Declarations. In the absence of any adjudication to the contrary by an arbitrator, or if permitted hereunder, 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.

17.2 Severability. Any determination by an arbitrator, or if permitted hereunder, by a court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

17.3 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.

17.4 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 Pronghorn Ranch can or will be carried out, or that any real property now owned or hereafter acquired by it 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. 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.

17.5 Successors and Assigns; Assignees of Declarant. Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder, to the extent of such assignment, which may be in whole or in part, and to the extent such assignment is in writing making reference to such rights. Any such assignment shall be evidenced by a Recorded instrument executed by Declarant and its successors or assigns. Without limitation, Declarant may assign, in whole or in part, its various exemptions and privileges hereunder, including but not limited to such exemptions and privileges as may relate to signage, business use during development, voting rights and assessments, design review, its status as a Class B member, and other matters, and Declarant may grant, in its sole discretion, any similar exemptions and privileges to any Developer Owner.

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

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

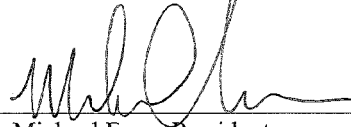
17.8 **Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or any resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified herein or in the resolution of the Board, such 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 paragraph 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.

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

DECLARANT:

Granite Dells Estates Properties, Inc., an Arizona corporation

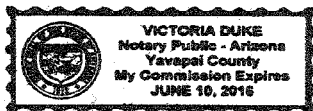
By



Michael Fann, President

STATE OF ARIZONA)
) ss.
County of Yavapai)

On this 1 day of April, 2015, before me personally appeared **Michael Fann**, who acknowledged himself to be President of Granite Dells Estates Properties, Inc., an Arizona corporation, and that he, being authorized so to do, executed the foregoing Declaration for the purpose therein contained.



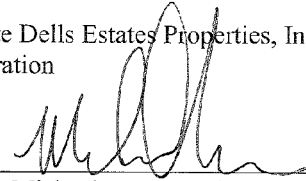
Notary Public

CONSENT

The undersigned, as the owner of legal simple title to the Covered Property and the Annexable Property, executes this Declaration for purposes of subjecting the Covered Property hereto.

Granite Dells Estates Properties, Inc., an Arizona corporation

By



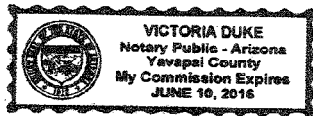
Michael Fann, President

STATE OF ARIZONA)

) ss.

County of Yavapai)

On this 1 day of April, 2015, before me personally appeared **Michael Fann**, who acknowledged himself to be President of Granite Dells Estates Properties, Inc., an Arizona corporation, and that he, being authorized so to do, executed the foregoing Consent to Declaration for the purpose therein contained.



Notary Public

EXHIBIT A
(Covered Property)

Lots 1 through 208 of Granite Dells Estates Phase 1A P.A.D. as described in the Plat recorded February 23, 2015, in the Official Records of Yavapai County, Arizona, as Document No. 2015-0007882.

Recording Requested by
Empire West Title

When recorded, please return to:

Building Prescott, LLC
600 West Gurley, Suite 100
Prescott, Arizona 85306
Attn: Ms. Ellen Carpenter

103647 EW.CIL

**DESIGNATION OF DEVELOPER OWNER BY DECLARANT
AND PARTIAL ASSIGNMENT OF RIGHTS**

1 of 2

THIS DESIGNATION OF DEVELOPER OWNER BY DECLARANT ("Designation") is made as of the 11th day of June, 2019, by GRANITE DELLS ESTATES PROPERTIES, INC., an Arizona corporation (the "**Declarant**"), and BUILDING PRESCOTT, LLC, an Arizona limited liability company ("**Builder**").

RECITALS:

A. Declarant is the Declarant under that Declaration of Covenants, Conditions and Restriction and Easements recorded as of February 23, 2015 as Document No. 2015-0007878 as amended and restated by those certain Amended and Restated Declaration of Covenants, Conditions, Restriction and Easements for Granite Dells Estates, recorded on April 3, 2015 at Document No. 2015-0014870 (the "**Declaration**"). Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed in the Declaration.

B. Declarant, as "Seller", entered into that certain Option Agreement and Escrow Instructions dated as of July 23, 2018, as amended, with Builder, as buyer, as amended, with regard to fifty (50) lots in the subdivision known as known as Lots 63 through 67 inclusive, 69 through 79 inclusive, 89 through 100 inclusive, 104 through 109 inclusive, and 112 through 127 inclusive of Granite Dells Estates Phase 2A & 2B, as set forth in the Final Plat for Granite Dells Estates – Phase 2A & 2B, recorded in Instrument No. 2018-0009805-1, Official Records of Yavapai County, Arizona, which lots are subject to the Declaration (the "**Purchase Transaction**").

C. Pursuant to the provisions of the Declaration, the Declarant desires to designate Builder as a "Developer Owner" as defined in Section 1.25 of the Declaration and to assign certain Declarant rights to Builder, as more fully described herein.

DESIGNATION:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, Declarant and Builder hereby agree as follows:

1. Pursuant to Section 1.25 of the Declaration, Declarant, as to those lots conveyed by Declarant as "Seller" to Builder, hereby (i) designates Builder as a "Developer Owner" (as that term is defined in the Declaration), with all of the rights, powers, authority and benefits afforded and granted to a Developer Owner under the Declaration, including but not limited to the provisions of Sections 5.2.24, 5.2.31 and 5.2.32 thereof, and (ii) grants to Builder the temporary sales easement under the provisions of Section 3.9 of the Declaration. The execution and delivery of this Designation by Declarant to Builder was a condition to the closing of the Purchase Transaction.

2. Declarant and Builder each agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purposes of this Designation. This Designation shall be construed and enforced according to Arizona law.

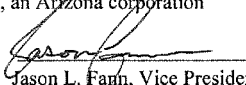
3. Unless otherwise defined herein, capitalized terms shall have the meaning ascribed in the Declaration.

4. This Designation may be executed in any number of counterparts, each of which, when so executed and when delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, Declarant and Builder have executed this Designation as of the date first written above.

"Declarant"

GRANITE DELLS ESTATES PROPERTIES,
INC., an Arizona corporation

By: 
Jason L. Fann, Vice President

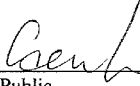
"Builder"

BUILDING PRESCOTT, LLC,
an Arizona limited liability company
By: Grounds Holdings LLC, an Arizona limited
liability company, Manager

SIGNED IN COUNTERPART
Ellen Carpenter
Its: Chief Operating Officer and CFO

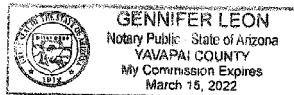
STATE OF ARIZONA)
)ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 11 day of June, 2019, by Jason L. Fann, the Vice President of Granite Dells Estates Properties, Inc., an Arizona corporation, on behalf of said corporation.


Notary Public

My commission expires:

3.15.22



2. Declarant and Builder each agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purposes of this Designation. This Designation shall be construed and enforced according to Arizona law.

3. Unless otherwise defined herein, capitalized terms shall have the meaning ascribed in the Declaration.

4. This Designation may be executed in any number of counterparts, each of which, when so executed and when delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, Declarant and Builder have executed this Designation as of the date first written above.

"Declarant"

GRANITE DELLS ESTATES PROPERTIES,

SIGNED IN COUNTERPART
By: _____

Jason L. Fann, Vice President

"Builder"

BUILDING PRESCOTT, LLC,

an Arizona limited liability company

By: Grounds Holdings LLC, an Arizona limited liability company, Manager

By: Ellen Carpenter
Ellen Carpenter

Its: Chief Operating Officer and CFO

STATE OF ARIZONA)
)ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Jason L. Fann, the Vice President of Granite Dells Estates Properties, Inc., an Arizona corporation, on behalf of said corporation.

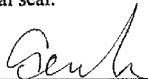
Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 11 day of June, 2019, by Ellen J. Carpenter, the Chief Operating Officer and CFO of Building Prescott, LLC, an Arizona limited liability company, on behalf of said company.

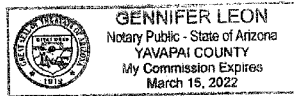
IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires:

3.15.22



Recording Requested by
Empire West Title

When recorded, please return to:

Building Prescott, LLC
600 West Gurley, Suite 100
Prescott, Arizona 85306
Attn: Ms. Ellen Carpenter

105931 EW GL

2 of 3

**DESIGNATION OF DEVELOPER OWNER BY DECLARANT
AND PARTIAL ASSIGNMENT OF RIGHTS**

THIS DESIGNATION OF DEVELOPER OWNER BY DECLARANT ("Designation") is made as of the _18 day of June, 2019, by GRANITE DELLS ESTATES PROPERTIES, INC., an Arizona corporation (the "**Declarant**"), and BUILDING PRESCOTT, LLC, an Arizona limited liability company ("**Builder**").

RECITALS:

A. Declarant is the Declarant under that Declaration of Covenants, Conditions and Restriction and Easements recorded as of February 23, 2015 as Document No. 2015-0007878 as amended and restated by those certain Amended and Restated Declaration of Covenants, Conditions, Restriction and Easements for Granite Dells Estates, recorded on April 3, 2015 at Document No. 2015-0014870 (the "**Declaration**"). Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed in the Declaration.

B. Declarant, as "Seller", entered into that certain Option Agreement and Escrow Instructions dated as of July 23, 2018, as amended, with Builder, as buyer, as amended, with regard to fifty (50) lots in the subdivision known as known as Lots 63 through 67 inclusive, 69 through 79 inclusive, 89 through 100 inclusive, 104 through 109 inclusive, and 112 through 127 inclusive of Granite Dells Estates Phase 2A & 2B, as set forth in the Final Plat for Granite Dells Estates -- Phase 2A & 2B, recorded in Instrument No. 2018-0009805-1, Official Records of Yavapai County, Arizona, which lots are subject to the Declaration (the "**Purchase Transaction**").

C. Pursuant to the provisions of the Declaration, the Declarant desires to designate Builder as a "Developer Owner" as defined in Section 1.25 of the Declaration and to assign certain Declarant rights to Builder, as more fully described herein.

DESIGNATION:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, Declarant and Builder hereby agree as follows:

1. Pursuant to Section 1.25 of the Declaration, Declarant, as to those lots conveyed by Declarant as "Seller" to Builder, hereby (i) designates Builder as a "Developer Owner" (as that term is defined in the Declaration), with all of the rights, powers, authority and benefits afforded and granted to a Developer Owner under the Declaration, including but not limited to the provisions of Sections 5.2.24, 5.2.31 and 5.2.32 thereof, and (ii) grants to Builder the temporary sales easement under the provisions of Section 3.9 of the Declaration. The execution and delivery of this Designation by Declarant to Builder was a condition to the closing of the Purchase Transaction.

2. Declarant and Builder each agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purposes of this Designation. This Designation shall be construed and enforced according to Arizona law.

3. Unless otherwise defined herein, capitalized terms shall have the meaning ascribed in the Declaration.

4. This Designation may be executed in any number of counterparts, each of which, when so executed and when delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, Declarant and Builder have executed this Designation as of the date first written above.

"Declarant"

GRANITE DELLS ESTATES PROPERTIES,
INC., an Arizona corporation

By:

Michael Fann, President

"Builder"

BUILDING PRESCOTT, LLC,
an Arizona limited liability company
Buildings Holdings LLC, an Arizona limited
company, Manager

By:

Ellen Carpenter

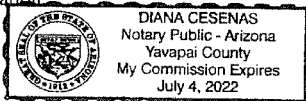
Its: Chief Operating Officer

STATE OF ARIZONA)

)ss.

County of Yavapai)

The foregoing instrument was acknowledged before me this 18 day of July 18, 2019, by Michael Fann, the President of Granite Dells Estates Properties, Inc., an Arizona corporation, on behalf of said corporation.



Diana Cesenas
Notary Public

My commission expires:

July 4, 2022

2. Declarant and Builder each agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purposes of this Designation. This Designation shall be construed and enforced according to Arizona law.

3. Unless otherwise defined herein, capitalized terms shall have the meaning ascribed in the Declaration.

4. This Designation may be executed in any number of counterparts, each of which, when so executed and when delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, Declarant and Builder have executed this Designation as of the date first written above.

"Declarant"

GRANITE DELLS ESTATES PROPERTIES,
an Arizona corporation

By: _____

Michael Fann, President

"Builder"

BUILDING PRESCOTT, LLC,
an Arizona limited liability company
By: Grounds Holdings LLC, an Arizona limited
liability company, Manager

By: _____

Ellen Carpenter

Its: Chief Operating Officer

STATE OF ARIZONA)

)ss.

County of Yavapai)

The foregoing instrument was acknowledged before me this 22 day of ~~October, 2019~~^{July 2019}, by Michael Fann, the President of Granite Dells Estates Properties, Inc., an Arizona corporation, on behalf of said corporation.

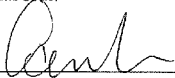
Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 22 day of July 2019 by Ellen Carpenter, the Chief Executive Officer of Building Prescott, LLC, an Arizona limited liability company, on behalf of said company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires:

3-15-2022

