

**WHEN RECORDED, RETURN TO:**

Brown Homes, LLC  
8700 E. Via De Ventura Blvd., Suite 350  
Scottsdale, AZ 85258

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HERITAGE POINTE**

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE POINTE

This Declaration of Covenants, Conditions, and Restrictions for Heritage Pointe (this "Declaration") is made this 4th day of March, 2021, by Sage Land Holdings, LLC, an Arizona limited liability company (the "Declarant").

### **INTRODUCTION**

A. The Declarant is the Owner of fee title to the real property located in the Town of Chino Valley, County of Yavapai, Arizona, legally described on Exhibit A attached hereto (the "Property").

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

C. Declarant deems it desirable to provide for the creation of a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair and replace the Areas of Association Responsibility and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Areas of Association Responsibility and the enforcement of the covenants, conditions and restrictions contained in this Declaration.

### **ARTICLE 1** **DEFINITIONS**

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

**1.1 "Areas of Association Responsibility"** means (a) all Common Area; and (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot or a public right-of-way which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or other Recorded document executed by the Declarant or the Association.

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

**1.3 "Assessable Lot"** means, during the Declarant Control Period, a Lot owned by a Person other than the Declarant. After the termination of the Declarant Control Period, all Lots shall be Assessable Lots.

**1.4 "Assessment"** means a Regular Assessment or Special Assessment.

**1.5 "Assessment Lien"** means the lien created and imposed by Article 7.

**1.6 "Assessment Period"** means the period set forth in Section 7.4.

**1.7 "Association"** means The Heritage Pointe Community Association, an Arizona nonprofit corporation, and its successors and assigns. Declarant intends to incorporate the Association under such name, however, during the Declarant Control Period, Declarant reserves the right to incorporate the Association under such other name as the Declarant deems appropriate.

**1.8 "Association Rules"** means the rules adopted by the Board pursuant to Section 6.3.

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

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

**1.11 "Common Area"** means (a) the Tracts shown on the Plat and designated as Common Areas, together with all improvements situated thereon and (b) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

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

**1.13 "Community Documents"** means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules and Design Guidelines, all as amended from time to time.

**1.14 "Construction"** means any de-vegetation, excavation or grading work or the construction, erection or installation of an Improvement on a Lot.

**1.15 "Declarant"** means Sage Land Holdings, LLC, an Arizona limited liability company, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

**1.16 "Declarant Control Period"** means the period commencing upon the Recording of this Declaration and ending on the earlier of (a) the date the Declarant or a Developer does not own or hold an option to purchase any part of the Property, or (b) the date on which the

Declarant gives notice to the Association in writing that they are terminating the Declarant Control Period.

**1.17 "Declaration"** means this Declaration of Covenants, Conditions, and Restrictions for Heritage Pointe, as amended from time to time.

**1.18 "Design Guidelines"** means the procedures, standards and guidelines adopted by the Board pursuant to Section 3.1, as amended or supplemented from time to time.

**1.19 "Design Review Committee"** shall be deemed to be a reference to the Board.

**1.20 "Developers" or "Developer"** means the Declarant or any entity affiliated with the Declarant engaged in the marketing of Lots and/or Residences.

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

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

**1.23 "Improvement"** means: (a) any Residence, building, fence or wall; (b) any swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (c) any road, driveway or parking area; (d) any trees, plants, shrubs, grass or other landscaping improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, and (f) any other structure of any type, kind or nature.

**1.24 "Lessee"** means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of the lessee's or tenant's interest under a lease.

**1.25 "Lot"** means a parcel of land within the Project, whether improved or unimproved, intended for independent ownership and use and designated as a "lot" on the Plat and any Residence, building, structure or other Improvement situated thereon.

**1.26 "Maintenance"** means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

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

**1.28 "Member"** means any Person who is a member of the Association as provided in Section 6.6.

**1.29 "Modification"** means an addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot.

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

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

**1.32 "Plat"** means the Final Plat of Heritage Pointe as recorded in the official records of Yavapai County, Arizona, and all amendments, supplements and corrections thereto.

**1.33 "Property" or "Project"** means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon.

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

**1.35 "Recording"** means placing an instrument of public record in the office of the County Recorder of Yavapai County, Arizona, and Recorded means having been so placed of public record.

**1.36 "Regular Assessment"** means the Assessments levied pursuant to Section 7.2.

**1.37 "Residence"** means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

**1.38 "Resident"** means each person occupying or residing in any Residence.

**1.39 "Special Assessment"** means any assessment levied pursuant to Section 7.3.

**1.40 "Visible From Neighboring Property"** means, with respect to any given Improvement, that such Improvement is or would be visible to a natural person six feet tall, standing at ground level on any part of any Lot, the Common Area or any public street within or adjacent to the Project at the same elevation as the object being viewed.

## ARTICLE 2 PROPERTY AND PERSONS BOUND BY DECLARATION

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

**2.2 Disclaimer of Implied Covenants.** No representation or warranty is made by Declarant or Developers that (i) the Project will be completed in accordance with the zoning or development plans for the Project as they exist on the date this Declaration is Recorded; (ii) any portion of the Project will be committed to or developed for a particular use or for any use, except that all such uses shall be consistent with the development of the Project for single family residential purposes; or (iii) the use of any portion of the Project will not be changed in the future. No warranties or representations express or implied, are made by the Declarant or Developers as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to the Project. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration. No representations or warranties of any kind, express or implied, have been given or made by the Declarant, Developers, or their agents, consultants, or employees in connection with the Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration or in a disclosure report for the Project issued to the Declarant or a Developer, or in any written contract executed by the Declarant or a Developer.

## ARTICLE 3 ARCHITECTURAL CONTROL

### **3.1 Design Review Committee.**

3.1.1 The Board shall perform the duties and exercise the power and authority imposed on or granted to the Design Review Committee by the Community Documents.

3.1.2 The Design Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (a) the size and height of Residences; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (c) placement of Residences and other buildings; (d) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage; (g) perimeter and screen fence design and appearance; (h) time periods for commencement and completion of any approved construction or modification; and (i) rules and regulations governing construction activities. Notwithstanding the foregoing, the Design Review Committee shall limit the area of landscaping that requires watering to no more than 3,264 square feet of total outdoor watering area per lot.

### **3.2 Approval Required.**

3.2.1 No Construction or Modification shall be made or done without the prior written approval of the Design Review Committee; provided, however, that the provisions of this Article do not apply to, and approval of the Design Review Committee shall not be required for, any Construction or Modification or any other work made by, or on behalf of, the Declarant.

3.2.2 Any Owner desiring approval of the Design Review Committee for any Construction or Modification shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the Construction or Modification which the Owner desires to perform. The request for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, materials and location of the Improvements and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request.

3.2.3 In the event that the Design Review Committee fails to approve or disapprove a complete application for approval within forty-five (45) days after the application, together with any fee payable pursuant to Section 3.7 and all supporting information, plans and specifications requested by the Design Review Committee, have been submitted to the Design Review Committee, approval will be deemed to have been denied and must be resubmitted in accordance with the requirements. After thirty (30) days of resubmittal of a complete application, approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a waiver of the Design

Review Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

**3.3      Review of Plans.**

3.3.1 In reviewing plans and specifications for any Construction or Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (a) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Design Review Committee but not yet constructed; (b) the location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; (c) the exterior design, finish materials and color of the proposed Improvements; and (d) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, in its sole and absolute discretion, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive.

3.3.2 Decisions of the Design Review Committee may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

3.3.3 The approval required of the Design Review Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.3.4 The Design Review Committee, by resolution, may exempt certain Construction or Modifications from the application and approval requirements of this Article, provided such Construction or Modifications are undertaken in compliance with the requirements of such resolution. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a Residence without approval so long as such activity does not affect the exterior appearance of the Residence.

**3.4      Variances.** The Design Review Committee may authorize variances from compliance with any provision of the Design Guidelines in circumstances where the design meets the intent of the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require, and the Design Review Committee determines, in its sole discretion, that the objective of the particular requirement can still be achieved. No variance shall be effective unless it is in writing and signed by an authorized representative of the Design Review Committee. No variance may be

contrary to this Declaration or prevent the Design Review Committee from denying a variance in other circumstances including, without limitation, circumstances similar or identical to circumstances under which the Design Review Committee previously granted a variance. For purpose of this Section, the inability to obtain approval of any governmental agency, issuance of any permit, or the terms of any financing shall not constitute hardships.

**3.5 Construction of Improvements.** Upon receipt of approval from the Design Review Committee for any Construction or Modification, the Owner who had requested such approval shall proceed with the Construction or Modification approved by the Design Review Committee as soon as practicable and shall diligently pursue such Construction or Modification so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Committee.

**3.6 No Changes Without Approval.** Any Construction or Modification approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee.

**3.7 Review Fee.** The Design Review Committee shall have the right to charge a fee for reviewing requests for approval of any Construction or Modification, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. The fee charged by the Design Review Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Design Review Committee in consulting with, or having the application reviewed by, architects, engineers or other professionals. The Association may retain architects, engineers or other persons as deemed necessary to review applications or otherwise assist the Design Review Committee.

**3.8 New Construction.** All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

**3.9 No Warranty.** The approval by the Design Review Committee of any Construction or Modification shall not be deemed a warranty or representation by the Design Review Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

**3.10 Conditional Approval.** The Design Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Design Review Committee in an amount determined by the Design Review Committee to be reasonably sufficient to: (a) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (b) repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Provided there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond

shall be released or security shall be fully refundable to the Owner upon the completion of the Improvements in accordance with the plans and specifications approved by the Design Review Committee and the Owner's written request to the Design Review Committee.

**3.11 Improvements to Areas of Association Responsibility.** If plans and specifications submitted to the Design Review Committee pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Construction or Modification with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement. Notwithstanding the foregoing, outdoor water use on all Areas of Association Responsibility is hereby prohibited.

## **ARTICLE 4 USE RESTRICTIONS**

### **4.1 Residential Use.**

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

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

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

**4.3 Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents. No condition shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property. No Person shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Design Review Committee, which may also require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Declarant.

**4.4 Antennas and Solar Equipment.** To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices for the transmission or reception of television, radio signals or internet and the installation of solar panels, pipes, lines or equipment for the purposes of providing heated water or a supplemental source of power shall be subject to the prior written approval of the Design Review Committee. Therefore, no antenna, satellite or microwave dish or other device for transmission or reception of television, radio signals or internet and no solar panels, pipes, lines or equipment for the purposes of providing heated water or a supplemental source of power shall be constructed, installed, erected, used or maintained on any Lot without the prior written approval of the Design Review Committee unless applicable law prohibits the Design Review Committee from requiring such approval. Even if applicable law prohibits the Design Review Committee from requiring prior approval for the installation of certain antennas or solar equipment, any such antennas and solar equipment must still be installed in accordance with the Design Guidelines and nothing shall preclude the Association from adopting reasonable safety and/or architectural aesthetics. Association Rules which do not impede the Owner's ability to obtain solar power or to obtain adequate reception from a protected class of satellite dishes or antennas with the scope of the FCC Rules. Without limiting

the foregoing, all satellite dishes and antennas within the scope of the FCC Rules shall be ground-mounted and placed in the rear or fenced side yard of a Lot unless, as a result of such placement, the Owner is not able to obtain a satisfactory signal as defined in the FCC Rules.

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

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

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

**4.8 Animals.** No animal, bird, reptile or livestock may be kept on any Lot, except that a reasonable number (as determined by the Board in its sole and absolute discretion, but in no event less than two Permitted Pets) of dogs, cats, parakeets or similar household birds (collectively "Permitted Pets") which may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes and provided such Permitted Pets are not a nuisance to any other Owner. All Permitted Pets shall be confined to an Owner's Lot, except that a dog or cat may be permitted to leave an Owner's Lot if such dog or cat is not permitted to enter upon any other Lot. No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. Any person bringing a Permitted Pet onto the Common Area (or any Lot) shall immediately remove any solid waste deposited on the Common Area (or any Lot) by the Permitted Pet. The Board may restrict the portions of the Common Area on which Permitted Pets are permitted. No structure for the care, housing or confinement of any Permitted Pet shall be maintained so as to be Visible From Neighboring Property without prior approval of the Design Review Committee. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, one or more Permitted Pets are creating a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. The Board may adopt Association Rules further restricting and governing animals within the Project, which Association Rules may include, without limitation rules providing for the removal from the Project of a domestic pet which has bitten or attacked a person or other animal, has a propensity

to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Project or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Residents.

**4.9 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with residential use of property, or machinery or equipment necessary for the Construction or Modification of Improvements on a Lot, or such machinery or equipment used by the Declarant or Developers in constructing Common Areas and Residences, or such machinery or equipment that the Association may require for the operation and Maintenance of the Project.

**4.10 Signs.** Unless otherwise prohibited by applicable law, except for signs constructed or erected by the Declarant or by the Association, no signs whatsoever may be erected, posted or displayed on any Lot in a location that is Visible From Neighboring Property without the prior written approval of the Design Review Committee.

**4.11 Further Subdivision, Property Restrictions, Rezoning and Timeshares.**

4.11.1 Without the prior written approval of the Board, no Owner other than the Declarant shall do any of the following: (a) further subdivide a Lot or separate the Lot into smaller lots or parcels; (b) convey or transfer less than all of a Lot; or (c) re-plat the Lot or combine the Lot with other Lots. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration.

4.11.2 No Lot or Residence construction thereon may be used and/or occupied by any Person pursuant to any joint or common ownership, use and/or occupancy by three (3) or more Unrelated Persons (defined below) during any 365-day period for the primary purpose of allocating periodic use or occupancy of such Residence among Unrelated Persons, or their lessees, sub-lessees, assignees, or permittees on an ongoing basis over time pursuant to a timesharing plan, fractional ownership-interest plan, fractional private residence-club plan, membership residential-privilege plan, or any other similar type of plan or arrangement (collectively "Timesharing Plan"), regardless of whether such arrangement constitutes a timesharing plan or timeshare interests under Arizona law or under the laws of any other particular state. Any type of Timesharing Plan, whether or not the Lot or Residence is owned by one Person, and whether or not currency or another form of compensation, trade, or barter is provided in exchange for the use of the Lot and Residence, is prohibited. For purposes of this Section, "Unrelated Persons" means purchasers or holders of such rights of use or occupancy, whether by owning a fee title interest, or by holding some other right or interest, or some other right of occupancy, whether or not any interest in the Lot or Residence is connected to said right, directly or indirectly, individually or through a corporation, partnership, limited liability company, trust or other entity, who are not related by blood, adoption or marriage. In calculating three (3) or more Unrelated Persons, a husband and wife and their children (including the

children of either spouse), or a family trust or any other entity comprised exclusively of the same people, shall collectively constitute only one Unrelated Person.

**4.12 Vehicles and Parking.** No automobile, van, sport utility vehicle, pickup truck, bus, motorcycle, motorbike, all-terrain vehicle, utility or commercial vehicle, recreational vehicle, mobile home, trailer, boat or other watercraft, oversized vehicle, or inoperable vehicle may be parked or stored within the Project so as to be Visible From Neighboring Property except for: (i) the parking (including overnight parking) of no more than two (or three on Lots in which a three car garage is included) automobiles, vans, sport utility vehicles or pickup trucks on the driveway situated on a Lot as long as they fit fully on the driveway and are not on any part of the landscaping; (ii) temporary parking of a motor home, travel trailer, camper, recreational vehicle or boat and boat trailer on the driveway situated on a Lot for a period of not more than twenty-four (24) consecutive hours and not more than forty-eight (48) hours within any seven (7) day period for the purpose of loading or unloading such vehicle or equipment; (iii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the Construction or Modification of any Improvement approved by the Design Review Committee; (iv) the temporary parking of a vehicle owned by a guest or invitee on any road or street in the Project for a period of not more than forty-eight consecutive hours; or (v) the parking of any boat or recreational vehicle in the rear or side yard of a Lot, so long as any boat or recreational vehicle is screened so as to not be Visible From Neighboring Property. Such screening shall be submitted to the Design Review Committee for approval. Nothing in this Section shall be deemed to preclude the parking or storage of the above described vehicles, boats, or trailers within a garage. No vehicle, boat, or trailer of any type or kind including, but not limited to, those listed above may be constructed, reconstructed, or repaired upon a Lot or any other property within the Project so as to be Visible From Neighboring Property except for emergency repairs. The Board shall have the right and power to adopt Association Rules governing and further restricting the parking of motor vehicles on the streets and parking of boats or recreational vehicles in back or side yards of Lots and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the Association Rules, the provisions of this Section shall control. The provisions of this Section do not apply to the parking of motor vehicles of the Declarant, Developers, or their employees, affiliates, contractors, and prospective buyers in connection with development and completion of Improvements on the Property and the marketing of Lots within the Project.

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

**4.14 Garages and Carports.** No garage shall be converted to living space or altered or used for storage of material or other purposes which would prevent the use of the garage for the parking of the number of vehicles for which it was designed, except that the Declarant may use a garage in one or more model homes for a sales office and/or a construction office. The

interior of all garages shall be maintained and kept in a neat, clean and sightly condition, free of debris or unsightly objects. It is recommended and preferred that garage doors be kept closed unless vehicles or Persons are entering or exiting, work is being performed on the Lot, or a Resident is nearby.

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

**4.16 Basketball Goals and Backboards.** No permanent basketball goal or backboard shall be constructed, installed or maintained on any Lot which would be Visible From Neighboring Property without the prior written approval of the Design Review Committee.

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

**4.18 Rental of Lots.**

4.18.1 No Owner may lease less than his entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Community Documents and that any violation of this Declaration or the Association Rules by the lessee or the other occupants shall be a default under the lease. There shall be no subleasing of Residences or assignments of leases.

4.18.2 At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees and additional adults who will reside in the Residence during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases his Lot and the Residence situated thereon must provide the Lessee with copies of this Declaration, the Design Guidelines and the Association Rules.

4.18.3 Any lease of a Lot or Residence situated thereon must be for an initial term of at least three (3) months. The Owner shall be liable for any violation of this Declaration, the Design Guidelines or the Association Rules by the Lessees or other persons residing in the Residence and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

**4.19 Exterior Lights.** Except as initially installed by the Declarant, no spotlights, floodlights or other lights shall be installed on the exterior of a Residence or on the ground or on any structure situated on any Lot without the prior written approval of the Design Review Committee.

**4.20 Window Cover Materials.** All window coverings facing a street must be of a neutral color unless otherwise approved in writing by the Design Review Committee. No reflective materials (including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items) shall be installed or placed upon the outside or inside of any windows of a Residence. No drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence shall be installed or placed on the inside or outside of the windows of a Residence without the prior written consent of the Design Review Committee.

**4.21 Landscaping.** Outdoor landscaping that requires watering is limited to 3,264 square feet of total outdoor watering area per Lot. All front yard landscaping on the Lot shall be installed within six (6) months of the close of escrow date and shall be submitted to the Design Review Committee for approval prior to installation.

**4.22 Variances; Diminution of Restrictions.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 4 if the Board determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete; and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners and Residents of the Project and is consistent with the high quality of life intended for Residents of the Project. If any restriction set forth in this Article 4 is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

## **ARTICLE 5** **EASEMENTS**

### **5.1 Easements for Use of Common Area.**

5.1.1 Every Owner and Resident and their guests shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (a) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 6.10; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees.
- (b) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area.
- (c) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other

amounts due to the Association or if the Owner has violated any other provisions of the Community Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

(d) The rights and easements reserved by or granted to the Declarant by this Declaration.

(e) The rights and easements, if any, reserved or granted to the Declarant or any other Person in the deed conveying the Common Area to the Association.

(f) The right of the Association to rent or lease any portion of the Common Area on a short-term basis to an Owner or Resident for the exclusive use of such Owner or Residents and their guests and invitees.

(g) The right of the Declarant or the Association to convey certain portions of the Common Areas to Owners of adjoining Lots in connection with the correction or adjustment of the boundary between the Common Area and adjoining Lots.

5.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use the recreational facilities situated on the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use such recreational facilities until the termination or expiration of such lease.

5.1.3 The right of easement and enjoyment of the Common Area may not be transferred or assigned except upon the conveyance or transfer of the Lot to which such right is appurtenant.

## **5.2 Utility and Development Easements.**

5.2.1 A non-exclusive, perpetual blanket easement is hereby granted over and through the Common Area for the purpose of: (a) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property or adjacent land any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private; and (b) ingress and egress to install, construct, operate, maintain, repair and replace such equipment and (c) storm water management and storm water drainage, as necessary or desirable for the orderly development of the Property. Such easement is hereby granted to any Person providing the aforesaid utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Declarant, where contemplated on any site plan approved by the Declarant or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Declarant. The Person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and

shall restore the surface of the land and the surrounding vegetation and improvements to their original condition as soon as possible.

5.2.2 The Declarant hereby reserves the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the purposes set forth in this Section or for any other purpose necessary or desirable for the orderly development of the Property. If the Person installing the utility or providing a service requests a specific easement by separate recordable documents, then the Declarant or the Association shall have the power to record a document locating such easements.

### **5.3 Easements to Facilitate Development.**

5.3.1 The Declarant hereby reserves to itself and its successors and assigns and to its contractors, subcontractors, suppliers, engineers, architects and agents a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, including without limitation: (a) the construction of all Improvements on the Common Area which Declarant deems necessary (including but not limited to mailbox facilities and monument signs identifying the Property); (b) the construction of Residences and other Improvements on Lots; and (c) the storage of supplies of building materials and equipment necessary to construct Improvements on the Common Area and the Lots.

5.3.2 The Declarant hereby reserves to itself, its successors and assigns the right to: (a) use any Lots owned or leased by the Declarant, any other Lot with written consent of the Owner thereof or any portion of the Common Area as models, management offices, sales offices, a visitors center, construction offices, customer service offices or sales office parking areas; and (b) install and maintain on the Common Area, any Lot owned or leased by the Declarant or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which the Declarant deems necessary for the development, sale or lease of the Property. So long as the Declarant is marketing lots the Declarant shall have the right to restrict the use of parking spaces situated on the Common Area and to reserve such parking spaces for use by prospective purchasers of Lots, the Declarant's contractors, subcontractors, suppliers, agents or employees or other Persons engaged in sales, marketing or construction activities for or on behalf of the Declarant.

5.3.3 In the event of any conflict or inconsistency between this Section 5.3 and any other provision of this Declaration, this Section shall control.

**5.4 Dedications and Easements Required by Governmental Authority.** The Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

**5.5 Further Assurances.** The easements granted and reservations made to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by the Declarant. Upon written request of the Declarant, the Association and each

Owner shall from time to time sign, acknowledge and deliver to the Declarant such documents or instruments deemed necessary by the Declarant to evidence or confirm the reservation or grant of rights and easements to the Declarant under this Declaration.

**5.6 Assignment of Development Rights.** The Declarant may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or Maintenance on any portion of the Property.

**5.7 Easement for Maintenance and Enforcement.** The Association and its directors, officers, agents, contractors and employees, the Design Review Committee and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Residence), for: (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents; (b) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Design Review Committee and that all Improvements are being properly maintained as required by the Community Documents; (c) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (d) performing installations or Maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for Maintenance; or (e) correcting any condition which violates the Community Documents.

**5.8 Easements for Encroachments.** If any Improvements on any Lot or portion of the Common Area now or hereafter encroach on any other portion of the Property by reason of: (a) the original construction thereof; (b) deviations within normal construction tolerances in the Maintenance of any Improvement; or (c) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

**5.9 Granting Easements in Favor of Adjoining Owners.** The Declarant or the Board shall have the right to grant easements or licenses to (i) Developers for construction of Improvements within the Project, which construction easements shall expire upon completion of the construction of such Improvements; (ii) adjoining property owners for construction of improvements within adjacent property, which construction easements shall expire upon completion of the construction of such improvements; and (iii) adjoining property owners in perpetuity in connection with the correction or adjustment of a boundary between the Common Area and one or more Lots and such adjacent property.

## **ARTICLE 6** **THE ASSOCIATION; ORGANIZATION; MEMBERSHIP** **AND VOTING RIGHTS**

**6.1 Formation of Association.** The Association shall be a nonprofit Arizona corporation. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Arizona law and all powers necessary or desirable to perform

the Association's duties and obligations and to exercise the rights and powers of the Association set forth in the Community Documents. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration with respect to the operation and maintenance of the Areas of Association Responsibility.

**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. The initial directors and officers of the Association shall be designated in the Articles, and such persons shall serve until their death, resignation or removal from office. Until the termination of the Declarant Control Period, the Declarant shall have the right to appoint and remove the members of the Board. After the termination of the Declarant Control Period, the Board shall be elected by the members as provided in the Bylaws. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

**6.3 The Association Rules.** The Board may adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (b) minimum standards for the Maintenance of Lots; or (c) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

**6.4 Personal Liability.** No director or officer of the Association, no member of the Design Review Committee or of any committee of the Association, and no other person acting on behalf of the Board whether past or present (the "Indemnified Parties") shall be personally liable to any Member, or to any other Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such person's duties and responsibilities under the Community Documents provided such person acted in good faith. The Association shall indemnify and hold harmless the Indemnified Parties against all contractual liability to others arising out of contracts made on behalf of the Association unless such contract has been made in bad faith. The Association shall indemnify each Indemnified Party against expenses and liabilities, including reasonable attorneys' fees, incurred or imposed upon him or her in connection with any proceeding in which he or she may be a party, or in which he or she may become involved, by reason of such person being a director, officer, employee, committee member, or other Person acting on behalf of the Association, except in such cases where such Indemnified Party is adjudged guilty by a court of law of gross negligence or malfeasance in the performance of his or her duties. Indemnification shall be in addition to and not exclusive of all other rights to which such Indemnified Party may be entitled.

**6.5 Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Community Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Community Documents or reasonably necessary to effectuate any such right or privilege, including without limitation, the right to employ a managing agent or other independent contractor to perform all of the duties and responsibilities of the Association and the Board,

subject to the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project.

**6.6 Identity of Members.** The members of the Association shall be the Owners of the Lots. All Owners of Lots shall be mandatory members of the Association. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

**6.7 Classes of Members and Voting Rights.** The Association shall have the following two classes of voting membership:

Class A. Class A members are all Owners, with the exception of the Declarant. Each Class A member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned.

**6.8 Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

**6.9 Transfer of Membership.** The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

**6.10 Conveyance, Lease or Encumbrance of Common Area.** The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property. In addition, the Association may convey portions of the Common Areas to make adjustments in the boundary lines between the Common Areas and adjoining Lots

or public rights-of-way. Except as expressly permitted by this Section, the Common Area shall not be mortgaged or conveyed without the prior written consent or affirmative vote of the Declarant and the total affirmative vote or written consent of the Owners holding at least two-thirds (2/3) of the votes in the Association.

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

**6.12 Association Contracts.** The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more bulk service agreements with service providers for such duration, at such rate(s) and on such other terms and conditions as the Board deems appropriate, including cable and satellite television and communications services, utility services, pest control, and monitoring or security services, as may be in the best interests of the Project. The cost of any such service agreements shall be a Common Expense and included within the budget for the Annual Assessment. In addition, the Board, on behalf of the Association, shall have the right to grant utility easements in favor of municipal or state agencies.

**6.13 Change of Use of Common Areas.** Upon (a) adoption of a resolution by the Board stating that the then present use of a designated part of the Common Areas or the Association's interest in the Common Areas is no longer in the best interest of the Owners, Lessees, and Residents, or no longer necessary or appropriate for the purposes intended, in the Board's opinion, and (b) the approval of the resolution by a majority of all of the Members (except the Declarant) and also by the Declarant (so long as the Declarant owns any Lot or a Parcel, or portion thereof), the Board shall have the power and right to sell, exchange, convey or abandon such Common Area or interest or change the use thereof (and in connection therewith, construct, reconstruct, alter, or change the Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided the new use and (i) shall be for the benefit of the Owners, Lessees, and Residents, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Areas. If the Board determines and the Board's resolution recites that any transaction involving the disposition or exchange of Common Area or the interest of the Association in Common Area will not have an adverse effect on the Association and the Owners, Lessees, and Residents of the Property, the Board may, in lieu of holding a meeting of Members pursuant to (b) above, give notice to all Owners of the proposed transaction and of their right to object to it and thereafter culminate the proposed transaction without a meeting of the Members if no more than ten percent (10%) of the Members object in writing within thirty (30) days after notice is given.

**6.14 Mergers, Consolidations and Federations.** The Association shall have the right and power to participate in mergers, consolidations and federations with any other non-profit corporation or association regardless of whether the objects, purposes, rights and powers of such

non-profit corporations or associations are less than, the same as, or greater than those of the Association. Any proposed merger, consolidation or federation shall not be effective or voted upon by the Owners without the prior approval of the Board. Any such mergers, consolidations, or federations shall be consummated only upon an affirmative vote of two-thirds (2/3) of all of the Members (except Declarant) in the Association, and also by Declarant (so long as Declarant owns any Lot or a Parcel, or portion thereof). Upon any such merger or consolidation, all of the properties, rights, and obligations of the other non-profit corporation or association shall be transferred to and assumed by the Association as the survivor, or alternatively, all of the properties, rights, and obligations of the Association shall be transferred to and assumed by the surviving or newly created non-profit corporation or association.

## **ARTICLE 7** **COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

### **7.1 Creation of Lien and Personal Obligation of Assessments.**

7.1.1 Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs (including but not limited to reasonable attorneys' fees) incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. During the Declarant Control Period, no Regular Assessment or Special Assessment shall be levied against any Lot owned by the Declarant.

7.1.2 Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

7.1.3 No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Design Review Committee to take some action or perform some function required of it.

### **7.2 Regular Assessments.**

7.2.1 At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources

other than Assessments are the amount to be generated through Assessments against the Lots. Based on the budget adopted by the Board, the Board shall assess against each Assessable Lot a Regular Assessment. The Regular Assessment shall be the same for each Assessable Lot. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by Arizona law.

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

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

7.3 **Special Assessments.** The Association may levy against each Assessable Lot a Special Assessment for the purpose of obtaining funds to pay the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area (including fixtures and personal property related thereto), or to pay unbudgeted expenses or expenses in excess of the amount budgeted. Any Special Assessment must be approved by two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. So long as the Declarant owns any Lot, any Special Assessment must be approved in writing by the Declarant. Any Special Assessment shall be levied in an equal amount for each Assessable Lot.

7.4 **Assessment Period.** The period for which the Regular Assessment is to be levied shall be the calendar year, except that the first Assessment Period shall commence on the date the first Lot is conveyed to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

7.5 **Obligation of Declarant for Deficiencies.** During the Declarant Control Period, in lieu of paying Regular Assessments, the Declarant shall pay and contribute to the Association such funds as may be necessary, when added to the Regular Assessment levied by the Association on the Class "A" Members, to pay all Common Expenses of the Association as they become due. The Board may require the payment of such funds by the Declarant from time to time as the Board deems necessary by giving written notice thereof to the Declarant, however, the Declarant shall not be required to make such payments more often than monthly. Each such notice shall state the total amount of funds required and the calculation of the pro rata share of such funds to be paid by the Declarant. In no event shall the Declarant be obligated to pay or

contribute money to the Association in excess of the amount of Regular Assessments that would have been payable by the Declarant if the Lots owned by the Declarant had been assessed as Assessable Lots. Amounts paid direct by the Declarant or Developers to the Association's creditors, or assets purchased by the Declarant or Developers for the Association, or amounts paid for services rendered by the Declarant, Developers, or their affiliates for the benefit of the Association that otherwise would have been an expense of the Association, shall apply against the obligations of the Declarant to pay all or a portion of such Association deficiency. Any deficiency to be paid by the Declarant under this Section may be in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any deficiency made by the Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed.

**7.6 Rules Regarding Billing and Collection Procedures.** Regular Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**7.7 Effect of Nonpayment of Assessments; Remedies of the Association.**

7.7.1 Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

7.7.2 The Association shall have a lien on each Lot for: (a) all Assessments levied against the Lot; (b) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (c) all fines levied against the Owner of the Lot; (d) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association; (e) any amounts payable to the Association pursuant to Section 8.3 or Section 8.4; and (f) any other amounts payable to the Association pursuant to the Community Documents.

7.7.3 The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

7.7.4 The Assessment Lien shall have priority over all liens or claims except for: (a) liens and encumbrances recorded before the Recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges against the Lot; and (c) any recorded first mortgage on the Lot, a seller's interest in a first contract for sale pursuant to Title 33, Chapter 6, Article 3 of the Arizona Revised Statutes Recorded prior to the Association's lien or a Recorded first deed of trust on the Lot. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

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

7.7.6 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien or (b) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

**7.8 Purposes for which Association's Funds May Be Used.** The Association may use the funds and property collected and received by it (including the Assessments, fees, loan

proceeds, surplus funds and all funds and property received by it from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Community Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Community Documents or applicable law; (c) providing or promoting activities and services the Board deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Project and the Owners, Lessees and Residents; (d) contracting for services (including, without limitation, trash collection or cable television) to be provided to Owners, Lessees and Residents; and (e) taking such other action as the Board deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Project.

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

**7.10 Initial Capital Contribution.** To assist the Association in establishing adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot, a sum equal to one-sixth (1/6th) of the then current Regular Assessment for an Assessable Lot (the "Working Capital Fee"). Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Community Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this Section shall be deemed a contribution to the capital of the Association. When there is no longer a Class B membership, the Board shall have the right, by an affirmative vote of the majority of the members of the Board, and based upon the Board's analysis of replacement and repair reserves, to permanently or temporarily reduce or increase the amount of the Working Capital Fee or cease assessing the Working Capital Fee, and having ceased to assess the Working Capital Fee, the Board shall have the right to reinstate assessment of such fee at any time thereafter, it being the intent that the Board shall have the right to begin or cease assessment of the Working Capital Fee as the Board deems appropriate from time to time. The Working Capital Fee shall not apply to a Developer, but shall apply to each subsequent Purchaser.

**7.11 Transfer Fee.** In addition to the Working Capital Fee referred to in Section 7.10, and in addition to any fees charged by the Association pursuant to Section 7.2, each Purchaser shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail to deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant

to A.R.S. §33-1806C. The Association may assign the transfer fee to the managing agent of the Association and direct that the transfer fee be paid by the Purchaser to the managing agent.

### **7.12 Reserves.**

7.12.1 Except as otherwise provided in this Section, each Purchaser of a Lot shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.12.3. The amount of the initial Reserve Contribution shall be set by the Board of Directors prior to the conveyance of the first Lot to a Purchaser. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve-month period without the approval of Members holding more than fifty percent (50%) of the total votes in the Association. The Reserve Contribution shall be deemed a contribution to the capital of the Association.

7.12.2 No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution; (d) the transfer or conveyance of a Lot as a result of a trustee's sale under a deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. 33-741, et seq.; or (e) a conveyance to a Developer.

7.12.3 The Board shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Areas of the Association Responsibility. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 7.12 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Unless the Association is exempt from Federal or State taxes, all reserves shall be accounted for as contributions to the capital of the Association and segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association. Funds in the Reserve Account may only be used to pay costs and expenses related to the periodic maintenance, repair and replacement of the Areas of Association Responsibility, unless the expenditure of any or all of the funds in the Reserve Account for other purposes is approved by the vote of Owners holding at least two-thirds (2/3) of the votes in the Association. To assist the Board in determining the appropriate amount of reserves, the Board shall obtain a reserve study at least once every three years (or update any prior reserve study), which study shall at a minimum include (a) identification of the major components of the Project which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c)

an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

**7.13 Pledge of Assessment Rights as Security.** The Association shall have the power to pledge the right to exercise its assessment powers and rights provided for in the Declaration as security; provided, however, that any such pledge shall require the prior affirmative vote or written assent of a majority of all of the Members (except Declarant), and also by the Declarant (so long as the Declarant owns any Lot which is being marketed for sale, or a Parcel, or portion thereof).

## **ARTICLE 8** **MAINTENANCE**

**8.1 Areas of Association Responsibility.** The Association shall be responsible for the management and Maintenance of the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate Maintenance of all Areas of Association Responsibility, but the Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon. By acceptance of a deed for a Lot within the Project, or by acquiring any interest in any of the Property subject to this Declaration, each Owner and the Association shall be deemed to have agreed that when the Declarant transfers ownership of the Common Areas to the Association, the Common Areas shall be owned and accepted subject to reasonable wear and tear and there shall be no obligation of the Declarant, or its successors, to repair, replace, or otherwise cause the Areas of Association Responsibility to be placed in like-new condition.

**8.2 Lot Owner's Responsibility.** Each Owner of a Lot shall be responsible for the Maintenance of the Lot, and all buildings, Residences, landscaping or other Improvements situated thereon, except for any portion of the Lot, or any Improvement situated thereon, which is an Area of Association Responsibility. All buildings, Residences, landscaping and other Improvements shall at all times be kept in good condition and repair. To the extent not an Area of Association Responsibility as set forth in Section 8.1 above, all grass, hedges, shrubs, vines and plants of any type on a Lot shall be mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. No yard equipment, wood piles or storage areas may be maintained so as to be visible from neighboring property or streets. All Lots upon which no Residences, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

**8.3 Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for Maintenance of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such Maintenance shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

**8.4 Improper Maintenance and Use of Lots.** In the event (a) any portion of any Lot is so maintained as to present a public or private nuisance or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, (b) any portion of a Lot is being used in a manner which violates this Declaration, or (c) the Owner of any Lot is failing to perform any of its obligations under the Community Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen (15) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

**8.5 Boundary Fence.**

8.5.1 The term "Boundary Fence" means a fence which is located astride or abutting the boundary line between two adjoining Lots. To the extent not inconsistent with this Section, the general rules of law regarding Boundary Fence shall apply to a Boundary Fence, if any, constructed within the Project; provided, however no Boundary Fence shall be constructed without the prior approval of the Design Review Committee. The Owners of contiguous Lots who share a Boundary Fence shall both equally have the right to use provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. Except as otherwise provided in this Section, the Owners of contiguous Lots who share a Boundary Fence shall each pay one-half (½) of the cost of any maintenance, repair or replacement of the Boundary Fence. Either of such Owners may perform any necessary repair, maintenance or replacement of the Boundary Fence and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (½) of such cost. Notwithstanding the foregoing, if any Boundary Fence is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, or due to root growth from trees or other vegetation on an Owner's Lot or from irrigation or overspray from sprinklers from an Owner's Lot, it shall be the obligation of such Owner to rebuild and repair the Boundary Fence without cost to the other Owner or Owners who share the Boundary Fence. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Boundary Fence shall first obtain the written consent of the adjoining Owners. To the extent necessary for an Owner to construct Improvements on his Lot, an Owner may remove all or part of a Boundary Fence, provided the Owner gives reasonable notice to the adjoining Owners and Residents that all or part of the Boundary Fence will be removed and the Owner desiring to temporarily remove a portion of the

fence makes appropriate arrangements (including the erection of a temporary fence or barrier) or pays appropriate compensation for the protection of children and pets on the adjoining Lot. Any Owner removing all or part of a Boundary Fence pursuant to this Section 8.5.1 shall rebuild and restore the Boundary Fence to its prior condition at such Owner's sole cost and expense within a reasonable time after entry through the Boundary Fence is no longer necessary in connection with the construction of Improvements.

8.5.2 The Declarant hereby reserves to itself and its successors and assigns a perpetual, non-exclusive easement over, under, upon and across the Lots for the purpose of repairing or relocating a Boundary Fence without the consent of the Owners who share the use of the Boundary Fence.

8.5.3 Fences, other than Boundary Fences, shall be Maintained and replaced by the Owner of the Lot on which such fence is located, except that any fence constructed by Declarant, Developers, or the Association which is placed on or near the boundary line between a Lot and (i) the Areas of Association Responsibility, or (ii) the perimeter of the Project, or (iii) an adjacent right-of-way, shall be maintained, repaired and replaced by the Association. In the event any such fence encroaches upon the Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be.

8.5.4 If any fence as originally constructed by Declarant or a Developer encroaches upon a Lot by not more than one (1) foot, a valid easement for such encroachment and for the Maintenance of such fence shall and does exist in favor of the Association and/or the Owner of the Lot(s) which share such Boundary Fence.

## **ARTICLE 9** **INSURANCE**

**9.1 Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

- (a) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;
- (b) Property insurance on all Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current

replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy, including "Agreed Amount" and "Inflation Guard" endorsements. Unless a higher maximum amount is required by Arizona law, the maximum deductible amount for policies covering Areas of Association Responsibility shall be the lesser of \$10,000 or one percent (1%) of the policy face amount.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(d) To the extent available at a reasonable cost, liability insurance for directors, officers and committee members of the Association in an amount determined by the Board, but not less than \$1,000,000 and such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

(e) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

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

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

**9.3 Payment of Insurance Proceeds.** With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**9.4 Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Common Areas which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either be retained by the Association as an additional capital reserve.

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

**9.6 Owner's Responsibility.** Neither the Declarant nor the Association, or any member, director, officer, shareholder, employee, or agent thereof, shall be liable to any Owner or Resident or any other Person if any risk or hazard is not covered by insurance or the amount thereof is inadequate. Without limiting the foregoing, each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense insuring his Lot and the Improvements thereon against loss and providing personal liability coverage. The Association insurance shall not cover these items. In addition, if an Owner's Lot is within a designated Flood Hazard Zone, then it is the responsibility of such Owner to obtain and maintain appropriate flood insurance. Premiums for all insurance obtained by the Association pursuant to this Article and all deductibles thereunder shall be Common Expenses and shall be paid for by the Association; provided, however, the Association may assess to an Owner any deductible amount expended as a result of the negligence, misuse or neglect for which such Owner is legally responsible under

this Declaration and Arizona law. The Board of Directors may select deductibles in reasonable amounts applicable to the insurance coverage maintained by the Association.

## **ARTICLE 10** **GENERAL PROVISIONS**

### **10.1 Enforcement.**

10.1.1 The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to:

- (a) imposing reasonable monetary fines after notice and an opportunity to be heard is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident of the Owner's Lot or by any guest or invitee of the Owner or any Lessee or Resident;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;
- (d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 15 days delinquent in paying any assessment or other charge owed to the Association;
- (e) exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;
- (f) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (g) without liability 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 or the Design Guidelines from continuing or performing any further activities in the Project;
- (h) towing vehicles which are parked in violation of this Declaration or the Association Rules;
- (i) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents,

to recover fines or money damages or to obtain such other relief as to which the Association may be entitled; and

(j) recording a written notice of violation by any Owner, Lessee or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community Documents; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

10.1.2 The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.

10.1.3 Any Owner shall also have the right to enforce this Declaration in any manner available at law or in equity. All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. If the enforcement of the Community Documents by the Association or a Lot Owner involves a Claim (as defined in Section 10.1), then the provisions of Article 10 shall apply, and in the event of any conflict or inconsistency between Article 10 and this Section, Article 10 shall prevail.

**10.2 Duration; Termination.** This Declaration, as it may be amended pursuant to Section 10.3, shall run with the land and bind the Property and be in full force and effect in perpetuity unless terminated as provided in this Section. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners holding ninety percent (90%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and

attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Following the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. So long as the Declarant owns one or more Lots, no termination of this Declaration shall be effective unless approved in writing by the Declarant.

### **10.3 Amendments.**

10.3.1 This Declaration may be amended at any time by the affirmative vote of Owners of not less than two-thirds (2/3) of the Lots. So long as the Declarant owns one or more Lots or holds an option to purchase any Lot, any amendment to this Declaration must be approved in writing by the Declarant. In addition, the provisions of Article 10 shall not be amended without the prior written consent of the Declarant even if the Declarant no longer owns any Lot or holds an option to purchase any Lot at the time the amendment is adopted by the Owner. So long as the Declarant owns one or more Lots or holds an option to purchase any Lot, the Declarant may unilaterally amend this Declaration.

10.3.2 Any amendment approved by the Owners shall be signed by the President or Vice President of the Association and shall be Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

10.3.3 Any challenge to an amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment.

**10.4 Condemnation of Common Area.** If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners holding at least eighty percent (80%) of the votes in the Association instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners holding more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds shall be retained by the Association and used for such purposes as may be determined by the Board.

**10.5 Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction

or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Design Guidelines, the Bylaws shall control.

**10.6 Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

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

**10.8 Laws, Ordinances and Regulations.** The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Declarant, the Board or the Design Review Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations. Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**10.9 References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

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

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

**10.12 Notices.** All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally, sent by Federal Express or other overnight

delivery service, sent by United States mail, postage prepaid or sent by fax, electronic mail or other form of wireless communication, as follows: (a) if to an Owner, at the mailing address, email address or fax number which the Owner provides to the Secretary of the Association for the purpose of notice or, if no such mailing address, email address or fax number is provided, at the street address of the Lot of such Owner or; (b) if to the Association or the Design Review Committee, at the principal place of business of the Association as shown on the records of the Arizona Corporation Commission or at such other mailing address, email address or fax number as may be designated by the Association in a written notice to the Owners pursuant to this Section. Notice given by personal delivery, overnight delivery service, fax, electronic mail or other form of wireless communication shall be deemed to have been received by the Person to whom the notice was addressed when the notice is actually received. A notice given by United States mail shall be deemed to have been received by the Person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Lot is owned by more than one Person, notice to one of the Owners shall constitute notice to all Owners of the same Lot.

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

**Sage Land Holdings, LLC,**  
an Arizona limited liability company

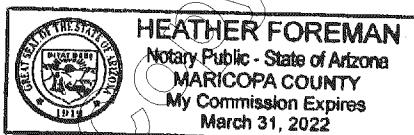
By: \_\_\_\_\_  
Michael D. Brown  
Its: Manager

STATE OF ARIZONA

)  
 ) ss.  
 )

County of Maricopa

On this 4<sup>th</sup> day of March, 2021, before me the undersigned officer, personally appeared Michael D. Brown, who acknowledged himself to be the Manager of Sage Land Holdings, LLC, an Arizona limited liability company, and acknowledged that he executed the foregoing instrument for the purposes therein contained for and on behalf thereof.



Notary Stamp

Heather Foreman  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lots 1-20 inclusive and Tracts B, C, D P1 and E of the Final Plat for Heritage Pointe Phase One as Recorded in the Official Records of Yavapai County, Arizona as Document No. 2021-0004535.

And Heritage Pointe Phases Two, Three and Four from the replat of Tracts F, G and H of Heritage Point Phase One as Recorded in the Official Records of Yavapai County, Arizona at Reception #2021-0004535. Being a portion of Parcels 306-13-004X, 306-13-004Z and 306-13-120 as Recorded in the Official Records of Yavapai County, Arizona as Reception #2017-0042102. Located in Section 9, Township 16N, Range 2W, Gila and Salt River Meridian Town of Chino Valley, Yavapai County, Arizona.