

**The Talon Group**

When recorded, return to:

Cornerstone Roger Ranch, LLC  
1630 S. Stapley Dr., Ste. 223  
Mesa, AZ 85204

OFFICIAL RECORDS OF  
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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, RESERVATIONS AND EASEMENTS  
FOR  
ROGERS RANCH UNIT 5**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS for Rogers Ranch Unit 5 (this "Declaration") is made as of the 16 day of May, 2005, by CORNERSTONE ROGERS RANCH, LLC, an Arizona limited liability company ("Declarant").

**RECITALS**

A. Declarant has the right to acquire that certain real property commonly known as Rogers Ranch Unit 5 located in the City of Phoenix, County of Maricopa, State of Arizona, and legally described on Exhibit "A" attached hereto (the "Property").

B. The Property is being developed for residential use with such common areas as may from time to time be designated pursuant hereto.

C. Declarant desires to form a nonprofit corporation for the purpose of acquiring, constructing, operating, managing and maintaining any common areas on the Property, establishing, levying, collecting and dispersing the assessments and other charges imposed hereunder, and administering and enforcing this Declaration and enforcing the use and other restrictions imposed on various parts of the Property.

D. Declarant desires to subject the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth in order to establish a general scheme for the development, sale, use and enjoyment of the Property for the purpose of enhancing and protecting the value, desirability and quality of life within the Property.

NOW, THEREFORE, Declarant hereby declares as follows

**ARTICLE 1**

**DEFINITIONS**

OC

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

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

1.2 "Assessments" shall mean all Annual Assessments, Special Assessments, Maintenance Assessments, and all fees, fines and charges due under this Declaration, the Association Rules or the Design Guidelines.

1.3 "Assessment Lien" shall mean the charge and continuing servitude and lien against a Lot or Parcel for payment of Assessments as described in *Section 9.1*.

1.4 "Association" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. It is the present intent of the Declarant that the Association shall be referred to as the "Rogers Ranch Unit 5 Homeowners Association." Declarant, however, shall be entitled to name the Association as it deems appropriate.

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

1.6 "Board" shall mean the Board of Directors of the Association.

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

1.8 "City" shall mean the City of Phoenix or other municipality within which a portion of the Property may be located now or in the future.

1.9 "Committee" shall mean the Design Review Committee formed pursuant to this Declaration.

1.10 "Common Areas" shall mean (a) those portions of the Property together with the buildings, structures and improvements thereon, and other real property which the Association may from time to time own in fee or in which it may have a leasehold or easement interest for as long as the Association holds fee title or a leasehold or easement interest; (b) all land within the Property which the Declarant, by this Declaration or in any other Recorded instrument, make available for use by Members of the Association or otherwise designates as Common Areas for purposes of this Declaration; (c) all land or right-of-way easements within the Property which are dedicated to the public or to the city, but which the city or other governmental agency requires the Association to maintain; and (d) any other areas with respect to which the Association has assumed in writing administrative or maintenance responsibilities.

1.11 "Declarant" shall mean and refer to the above recited Declarant or any person or entity to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned. The Declarant's rights shall only be assigned by a written, Recorded instrument executed by Declarant expressly assigning those rights.

1.12 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Reservations and Easements, as amended or supplemented from time to time as herein permitted.

1.13 "Delinquent Amount" shall mean any Assessment, or installment thereof, not paid when due.

1.14 "Design Guidelines" shall mean the design standards to be used by the Committee in rendering its decision on matters submitted to it for approval pursuant to *Article 5*.

1.15 "Dwelling Unit" shall mean any building, or part thereof, situated upon a Lot or Parcel and intended for use and occupancy as a residence, but shall exclude any model home until such model home has been sold or leased for use as a residence.

1.16 "FHA" shall mean the Federal Housing Administration and/or the U.S. Department of Housing and Urban Development.

1.17 "Lot" shall mean an area of real property in the Property designated as a "lot" on the Recorded Plat and intended or restricted for residential use.

1.18 "Maintenance Assessments" shall mean those Assessments levied by the Board against particular Lots or Parcels in accordance with the provisions of *Sections 9.7 and 13.3*.

1.19 "Member" shall mean all Owners, including Declarant, for so long as they are Class A or Class B Members of the Association.

1.20 "Membership" shall mean the combination of rights and duties of Members in the Association.

1.21 "Occupant" shall mean any Person, other than an Owner, occupying a Parcel or Lot, or any portion thereof or any building or structure thereon, as a Resident, Tenant, licensee or otherwise, other than on a merely transient basis.

1.22 "Owner" (when capitalized) shall mean (and any reference in this Declaration to "own", "owned" or "ownership" when used in reference to a portion of the Property shall be deemed to include) the Record holder of legal title to the fee simple interest in any Lot or Parcel or, in the case of a Recorded "contract," as that term is defined in A.R.S. § 33-741(2), then the holder, of Record, of the purchaser's or vendee's interest under said contract, but excluding others who hold such title merely as security. If fee simple title to a Lot or Parcel is

vested of Record in a trustee pursuant to A.R.S. § 33-801 *et seq.*, then for purposes of this Declaration legal title shall be deemed to be held by the trustor (or the trustor's successor of Record), and not by the trustee. An Owner shall include any Person who holds Record title to a Lot or Parcel in joint ownership or as an undivided fee interest. If the ownership of any building or other improvements is severed from the ownership of the underlying Parcel, the Owner of the interest in the Parcel and not the improvements shall be deemed an Owner hereunder; provided, however, an Assessment Lien shall encumber the interests in both the Parcel and the improvements.

1.23 "Parcel" shall mean each separate area of the Property owned by an Owner. Those parts of a Parcel which become Lots upon the Recording of a subdivision plat or a declaration of condominium creating Lots in regard thereto shall cease being a Parcel upon such Recordation.

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

1.25 "Plat" shall mean and refer to the Plat of Survey of the Property as Recorded in Book 670 of Maps, page 37, Official Records of Maricopa County, Arizona.

1.26 "Record" "Recording" and "Recorded" shall mean placing or having placed a document of public record in the Official Records of Maricopa County, Arizona.

1.27 "Resident" shall mean: (a) each Tenant who resides on the Property and the members of the immediate family of each Tenant who reside on the Property; (b) each Owner who resides on the Property and the members of the immediate family of each Owner who reside on the Property; and, (c) such persons as the Board, in its absolute discretion, may authorize or designate (including without limitation, guests of an Owner or Tenant).

1.28 "Single Family Residential Unit" shall mean a Dwelling Unit designed and intended for independent ownership and for use and occupancy as a residence by an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related who maintain a common household in a dwelling.

1.29 "Special Assessments" shall mean the assessments, if any, levied by the Association pursuant to *Section 9.5*.

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

1.31 "VA" shall mean the United States Veterans' Administration.

1.32 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to an individual six (6) feet tall, standing at ground level on any portion of the neighboring property.

## ARTICLE 2

### PROPERTY AND PERSONS BOUND BY THIS DECLARATION

2.1 General Declaration. This Declaration is established for the purpose of enhancing the value, desirability and attractiveness of the Property. All of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as the same may be amended or modified from time to time; provided, however, that land which is owned by a governmental entity for public purposes may be expressly exempted from this Declaration or portions thereof while owned by the governmental entity but only while so owned, and, any restrictions in this Declaration or any other instrument concerning the use and maintenance of such public areas imposed upon the Owners shall at all times be valid and binding. This Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Property and their successors in interest. Nothing in this Declaration shall be construed to prevent Declarant from (a) modifying any zoning or plans for portions of the Property owned by Declarant, or (b) from dedicating or conveying, or causing to be dedicated or conveyed, portions of the Property for uses other than as a Lot, a Parcel, or Common Areas.

2.2 The Role of the Association. The primary responsibilities of the Association are: (a) the maintenance of all Common Areas; and (b) through the Committee and Board, the design review of all improvements within the Property.

2.3 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that the Property is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to a Lot or Parcel agrees that Declarant shall have no liability with respect thereto.

## ARTICLE 3

### EASEMENTS OF ASSOCIATION AND DECLARANT

3.1 Landscape and Monument Sign Easement. There is hereby created in favor of Declarant and the Association, a non-exclusive easement for ingress, egress, installation, replacement, repair and maintenance of landscaping, sidewalks, bicycle paths, perimeter walls, monument signs and utilities upon, over and across (a) an area approximately 10 feet in width on each side of the collector streets within the Property, and (b) an area approximately 20 feet in width on each side of the arterial streets within the Property. If the reasonable use of such easement area so requires, the Association shall have the right of ingress and egress upon, over, under and across that portion of each Lot or Parcel which is immediately adjacent to said easement area for the purpose of exercising the rights and obligations of the Association with respect to the Common Areas.

3.2 Temporary Sign Easement. There is hereby created for the benefit of Declarant and its agents a temporary easement upon and across those portions of the Common Areas adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs which identify Persons building upon or developing portions of the Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon all portions of the Property, but in no event later than twenty (20) years after the date this Declaration is recorded.

3.3 Easement for Common Area Maintenance. The Association shall have an easement upon, over, under and across all Lots and Parcels and other areas of the Property for the purpose of (a) repairing, maintaining and replacing the Common Areas and all improvements thereon, and (b) performing all other rights, duties and obligations of the Association under this Declaration.

3.4 Encroachment Easement. If any portion of the Common Area or any improvement constructed thereon shall actually encroach upon any Lot or Parcel, whether such encroachment results from the initial construction or from subsequent repair, reconstruction, settlement or shifting, there shall be deemed to be an easement in favor of the Association on such Lot or Parcel for ingress and egress to, and the operation, maintenance, repair and replacement of the encroachment so long as the same shall exist. The Association shall at all times have the right to maintain any Common Area now existing or hereafter constructed, regardless of any encroachment of any such Common Area upon any Lot or Parcel.

3.5 Right of Entry for Inspection. The Committee and the Association and their employees and agents shall have the right of access to all portions of the Property (except the interior of any completed Dwelling Unit) to inspect the same, to check for, remove or cure (including, without limitation by performing in lieu of, but at the expense of, the defaulting party) violations therein under this Declaration, the Design Guidelines, or the Association Rules, and to effect maintenance or repairs of improvements (including without limitation of any utility facilities) contained therein or elsewhere; provided however, that such right shall be exercised in

a reasonable manner and at reasonable times and with prior written notification (unless emergency situations make written notification unreasonably burdensome under the circumstances) to the Owner of such portion of the Property. The requirement of written notification for routine access may be satisfied by a standard, published maintenance schedule.

3.6 Declarant's Easement and Rights. There is hereby created for Declarant and its agents, successors and assigns, upon, across, in, over and under the Common Areas as the same may from time to time exist and such of the Property on which development and construction of improvements and sales of such improvements has not been completed, easements for access, improvement, use, development, construction, dirt removal and placement, exhibit and sale purposes in connection with the improvement, development and sale of the Property. Declarant and its activities (including but not limited to construction of any improvement or performance of any work) shall be exempt from the design control provisions of *Article 5* hereof and the restrictions of *Section 6.2* hereof. Declarant specifically reserves the right to delegate, assign, share or grant from time to time all or any part of the rights, privileges or authority reserved to Declarant under this Declaration or all or any part of the exemptions granted to Declarant from provisions of this Declaration, upon such conditions or subject to such restrictions as Declarant shall deem appropriate, to any one or more grantees, all or any of which may mutually hold such rights, privileges, authority or exemptions concurrently with and not to the exclusion of each other and Declarant.

#### ARTICLE 4

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

4.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas in conformance with their contemplated use which shall pass with the title to each Owner's Lot or Parcel. The foregoing grant and right is subject, among other things, to the following limitations:

(a) The right of the Association to suspend the voting rights and the right to use and enjoy the Common Areas of any Owner (and the Owner's Occupants and guests):

(i) for any period during which an Assessment remains delinquent;

(ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, the Association Rules or the Design Guidelines; or,

(iii) for successive 60-day periods if any such infraction is not corrected during any preceding suspension period;

(b) The right of the Association to regulate and control use of the Common Areas pursuant to the Association Rules or otherwise in accordance with this Declaration, including the right to charge reasonable fees for the use of facilities and to limit the number of guests using the Common Areas, and to prohibit access to those Common Areas (such as landscaped rights-of-way and water retention and drainage areas) not intended for use by Owners;

(c) The right of the Association to dedicate or transfer any part of the Common Areas in accordance with *Section 12.5* or to change the use of the Common Areas in accordance with *Section 12.4*; and

(d) No Owner may store anything on the Common Areas or carry on any activities on the Common Areas which damage them or mar their appearance or interfere with another's right to use them.

4.2 Access Easement. If access to a Lot or Parcel is through a Common Area, any conveyance or encumbrance of such Common Area is subject to an easement for such access.

4.3 Drainage Easement. Each Lot and Parcel shall be subject to an easement for the drainage of water from other Lots, Parcels, Common Areas, or other property in accordance with the drainage plans for the Property on file with the City. In no event is Declarant making any representation or warranty regarding the adequacy of any drainage and Declarant is assuming no responsibility or liability with respect to any drainage.

4.4 Delegation of Use. Any Owner, in accordance with the Association Rules and this Declaration, may delegate his rights of use and enjoyment in the Common Areas to his Occupants or guests subject to the limitations set forth herein and in the Association Rules.

## ARTICLE 5

### DESIGN CONTROL

5.1 Design Review Committee. The Board shall establish a Design Review Committee to perform the functions set forth in this Declaration and shall adopt procedural rules and regulations for the Committee's performance of such duties, including procedures for the preparation, submission and consideration of the application for any approvals required by this Declaration. The Committee shall consist of a minimum of three regular members and may have such greater number of regular members and alternate members as the Board may designate. The Board shall have the right to appoint or remove the members of the Committee. The Board shall adopt Design Guidelines to be used by the Committee in rendering its decisions. The Committee shall have all the powers, duties and authority conferred upon it by this Declaration and the Design Guidelines. Without limiting the generality of the foregoing, it shall be the duty of the Committee to (a) consider and act upon all proposals or plans required to be submitted to it hereunder; (b) interpret and enforce the Design Guidelines; and (c) perform any other duties delegated to it by the Board or imposed upon it by this Declaration. The Committee shall have



the right (but not the obligation) to delegate the Committee's authority to review plans and proposals to a paid professional consultant, including a member of the Committee. The Committee shall have the right (but not the obligation) to delegate the Committee's authority to review certain plans and proposals for modifications to existing improvements to a Modifications Committee composed of Owners appointed by the Board. The Modifications Committee shall use the Design Guidelines in rendering its decisions and the provisions of *Sections 5.3, 5.4, 5.5, 5.6, and 5.7* below shall apply to the proceedings and decisions of the Modifications Committee as they do to those of the Committee.

5.2 Design Guidelines. The Design Guidelines may include, without limitation, provisions regarding:

- (a) architectural design, with particular regard to the harmony of the design with surrounding structures and topography;
- (b) height, size, setback, and placement of buildings;
- (c) landscaping design, content, maintenance, and conformity with the character of the Property (including, *e.g.*, the requirement of turf or the limitation of landscaping to low-water usage and/or desert varieties);
- (d) requirements concerning exterior color schemes, exterior finishes, and materials, and in particular the use of earth tones throughout the Property;
- (e) signage;
- (f) installation of landscaping, street lights, irrigation/sprinkler systems, pedestrian and bicycle trails, and other structures and amenities within street corridors;
- (g) perimeter and screen wall design and appearance;
- (h) grading and construction of the Common Areas, including the installation of landscaping, irrigation/sprinkler systems, trails and other structures and amenities within the Common Areas;
- (i) the exterior appearance and materials of all improvements, structures, and amenities throughout the Property;
- (j) design and construction of view walls and view fences between Lots and Common Areas; and
- (k) construction quality and construction warranties for all construction of Common Areas, and amenities within street corridors.

The Design Guidelines shall have the same force and effect as the Association Rules. The Committee may approve minor amendments to the Design Guidelines, however all material amendments shall require the approval of the Board and, while Declarant is the owner of any Lot or Parcel, Declarant.

5.3 Obligation to Obtain Approval. All excavation, grading, landscaping and/or other work which alters any portion of the Property from its state existing on the date such portion is first subjected to this Declaration must be performed in accordance with the Design Guidelines and may be performed only with the prior written approval of the Committee. Every building, residence, fence, canopy, exterior wall, sign, lighting, pool, foundation, roadway, driveway, drainage way or other structure or improvement built or erected on any Lot or Parcel must conform with the Design Guidelines and may be built only with the prior approval of the Committee. Any change, modification, alteration, remodeling or maintenance that alters the exterior appearance of any improvement (including a change in color scheme) must comply with the Design Guidelines and may be performed only with the prior approval of the Committee. All exterior trees, bushes, shrubs, plants or other landscaping planted or placed upon the Property must be selected from the approved plant list, if any, set forth in the Design Guidelines. Before commencing any work covered by this *Section 5.3*, each Owner shall submit to the Committee such plans and specifications as the Committee may require for the proposed work in accordance with the provisions of the Design Guidelines. An Owner may submit plans and specifications for standard homes and standard landscaping packages, which, once approved, may be built on any Lot owned by the Owner without further approval. The Committee shall then review and either approve or disapprove the proposed plans and specifications in accordance with the review procedures established by the Design Guidelines. No material changes or deviations in or from the plans and specifications for any work to be done on the Property, once approved by the Committee, shall be permitted without the prior approval of the Committee. Subject to the provisions of *Section 5.6* below, the decision of the Committee shall be final on all matters submitted to it pursuant to this Declaration.

5.4 Variances. The Committee may grant variances from the standards set forth in the Design Guidelines if the Committee determines the matter permitted under the requested variance will not have a substantially adverse affect on other Owners and Occupants and is consistent with the common plan for the Property.

5.5 Fee. The Board may establish a reasonable fee from time to time to defer the costs of the Committee in considering any requests for approvals submitted to the Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted. The Board may also authorize supplemental fees to cover the cost of retaining consultants and other professional services needed to evaluate properly any matter submitted to the Committee for review. The Board may also establish reasonable penalties for failure to comply with the Design Guidelines and this *Article 5*.

5.6 Appeal to Board. Any Owner aggrieved by a decision of the Committee may appeal the decision to the Board in accordance with procedures to be established in the Design Guidelines. If a decision of the Committee is overruled by the Board on any issue in

question, the prior decision of the Committee shall be deemed modified to the extent specified by the Board.

5.7 Exception. Notwithstanding anything contained in this Declaration to the contrary, nothing in this Declaration shall be construed to subject the activities of the Declarant to this *Article 5* or to the design control and review provisions.

## ARTICLE 6

### PERMITTED LAND USES AND RESTRICTIONS

6.1 Residential Use. The Property may only be used for the following purposes in accordance with this Declaration and the requirements imposed by applicable zoning laws and other state, county or municipal rules and regulations:

- (a) Single Family Residential Units.
- (b) Common Areas.

6.2 Restriction on Further Subdivision, Property Restrictions and Rezoning. The following shall apply to all portions of the Property (except property owned by Declarant):

(a) All proposed site plans, subdivision plats and condominium declarations for any Lot or Parcel, or portion thereof, must be approved in writing by the Board prior to Recordation thereof or commencement of construction on the applicable Lot or Parcel. No Lot or Parcel, or portion thereof, shall be further subdivided or subjected to a condominium declaration without the prior written approval of the Board.

(b) No further covenants, conditions, restrictions, or declarations shall be Recorded against any Lot or Parcel, or portion thereof, without the prior written approval of the Board.

(c) No applications for zoning, rezoning, variances or use permits shall be filed without the prior written approval of the Board (and of Declarant if Declarant still owns a Lot or Parcel and such application affects more than three Lots or affects any Parcel), and then only if such proposed zoning, variance or use is in compliance with this Declaration.

(d) No site plan, subdivision plat, declaration of further covenants, conditions and restrictions, application for zoning, rezoning, variances or use permits, or other instrument which is required by this *Section 6.2* to be approved by the Board (and by Declarant, if applicable) shall be effective unless the required approval is evidenced on such instrument by the signature of an authorized representative of the Board (and Declarant, if applicable).

(e) No site plan, subdivision plat or further covenants, conditions, or restrictions, and no application for zoning, rezoning, variances or use permits, shall be submitted to the City or any other governmental authority or agency unless the same has first been approved in writing by the Board (and Declarant, if applicable) as provided in this *Section 6.2*; further, no material changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Board hereunder (whether requested by the City or otherwise) unless such changes or modifications have first been approved by the Board in writing.

6.3 Landscaping. Within forty-five (45) days after the issuance of a certificate of occupancy or comparable approval by the City for the Dwelling Unit on a Lot, the Owner of such Lot shall commence the landscaping of all portions of the Lot that are disturbed by the construction of the Dwelling Unit that are Visible From Neighboring Property or visible from the Common Areas or the streets and complete such landscaping within ninety (90) days thereafter. All such landscaping shall be subject to prior approval by the Design Review Committee as set forth herein and each Owner must submit a separate, detailed landscape plan for approval by the Design Review Committee. In the event an Owner fails to commence such landscaping within said 45-day period or fully complete it within said 90-day period, the Board may by resolution make a finding to such effect and pursuant thereto give notice thereof to the Owner that unless landscaping is commenced within fourteen (14) days and thereafter diligently pursued to completion, the Board may cause such landscaping to be accomplished at said Owner's expense. If at the expiration of said fourteen (14) day period of time such landscaping has not been commenced and thereafter diligently pursued to completion, the Board shall be authorized and empowered to cause such landscaping to be completed and the cost thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien. Except as otherwise expressly provided in this Declaration, such landscaping and incidental work shall not be commenced without the prior written approval of the Design Review Committee and no material changes or deviations (as determined by the Design Review Committee) in or from any plans and specifications approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee.

6.4 Business. No gainful occupation, profession, business, trade or other nonresidential use shall be conducted on or in any Dwelling Unit, provided that an Owner or Resident may conduct limited business activities in a Dwelling Unit 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 Dwelling Unit; (b) the business activity conforms to all applicable zoning requirements; (c) the business activity does not involve door-to-door solicitation of Owners and Occupants; (d) the business activity does not generate drive-up traffic or customer or client parking; and (e) the business activity is consistent with the residential character of the property, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of Owners or Occupants, as may be determined in the sole discretion of the Board.

6.5 Animals. No animal, bird, livestock, horse, poultry or fowl of any kind, other than a reasonable number of generally recognized house pets (as determined by the Board

and set forth in the Association Rules) shall be maintained on or in any Lot or Parcel and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No structure for the care, housing or confinement of any permitted pet shall be Visible From Neighboring Property.

6.6 Garbage. No garbage, trash or debris shall be allowed, stored or placed on a Lot or Parcel except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and Parcel and shall not be allowed to accumulate thereon. No incinerator shall be maintained on any Lot or Parcel and no trash, garbage or debris shall be burned there on by open fire or otherwise.

6.7 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be Visible From Neighboring Property.

6.8 Window Coverings. In no event shall the interior or exterior of any windows be covered with reflective material, such as foil, or with paper, bed sheets or other temporary coverings.

6.9 Antennas and Dishes; Roof Structures and Equipment. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected or placed upon a Lot or Parcel, whether attached to a building or otherwise, except in accordance with the Design Guidelines, which may include requirements that the device be screened or concealed to be not Visible From Neighboring Property or to any lesser extent. No solar units or panels, heating, air conditioning or ventilation equipment, or any other equipment or structures shall be located or installed on any roof of a Dwelling Unit or other improvement on a Lot except as expressly permitted herein. The Board may grant a variance for solar panels or other solar equipment if attractively screened in accordance with standards established by the Board, subject to applicable federal or state energy conservation laws governing the installation of solar equipment on Residential Units. The Association may not prohibit or unduly restrict satellite dishes and antennas of the types covered by the Federal Communications Commission rules promulgated pursuant to the Telecommunications Act of 1996, as amended from time to time; provided that nothing shall preclude the Association from adopting reasonable safety and/or architectural aesthetics rules which do not impede the Owner's ability to obtain adequate reception from a protected class of satellite dishes or antennas within the scope of the FCC Rules. Without limiting the foregoing, all satellite dishes or antennas within the scope of the FCC Rules shall be ground-mounted unless, as a result of such placement, the Owner is not able to obtain a satisfactory signal as defined in the FCC Rules.

6.10 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot or Parcel except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or improvements thereon; (b) that which Declarant or the Association may require for the development, operation

and maintenance of The Property; or (c) common household equipment, machinery, power tools and appliances.

6.11 Signs. No signs of whatever nature shall be placed on any Lot or Parcel which are Visible from Neighboring Property except (a) signs required by legal proceedings; (b) a maximum of two street address identification signs for each individual residence, each with a maximum face area of 72 square inches or less; and (c) "for sale" and "for lease" signs and subdivision, condominium and apartment identification signs, the nature, number, location, content and design of which shall be approved in advance and in writing by the Committee. These sign restrictions shall not apply to the Association or Declarant.

6.12 Model Homes. Nothing contained herein shall prohibit the construction and maintenance of model homes, sales offices, property management offices, construction trailers and parking incidental thereto by Declarant or by persons engaged by them for the construction, marketing, rental or management of Dwelling Units within the Property; provided, however, that the models otherwise are in compliance with the provisions of this Declaration and ordinances of the City.

6.13 Prohibited Uses. The following uses of Lots and Parcels are prohibited:

(a) any use which is offensive by reason of visual display, odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Lot, Parcel or Owner; and

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

6.14 Temporary Occupancy and Temporary Buildings; Outside Storage. No trailer, tent, shack, garage, basement of an incomplete building, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent. Temporary structures used for construction activities during construction must receive prior written approval by the Committee with regard to location and appearance, and shall be removed immediately after completion of such construction.

6.15 Repair of Buildings. No building or improvement on any Lot or Parcel shall be permitted to fall into disrepair and each such building and improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance. If any building or improvement is damaged or destroyed, then, subject to the approvals required by *Article 5* above, such building or improvement shall, in the exercise of reasonable diligence, be repaired, rebuilt or demolished.

6.16 Duty of Maintenance. Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot or Parcel (including buildings, improvements, private drives, easement areas and grounds thereon) in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements. Unless otherwise provided herein, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations (a) on the Owner's Lot or Parcel (including all setback areas); (b) portions of the Common Areas adjacent to an Owner's Lot or Parcel which are on the Lot's or Parcel's side of any wall erected on the Common Areas; and, (c) public right-of-way areas between sidewalks (or bicycle paths or equestrian trails) and the street curb on the Owner's Lot or Parcel or other public or easement areas adjacent to the Owner's Lot or Parcel.

Such Owner shall not, however, be responsible for maintenance of any area over which (i) the Association assumes responsibility in writing; (ii) the Association has been given such responsibility in a Recorded instrument by the City; or (iii) the City assumes responsibility, for so long as the Association or City assumes or has such responsibility. The Committee may require landscaping by the Owner of the areas described in (a) - (c) of the previous paragraph. As used herein, maintenance shall include but not be limited to keeping all landscaped areas neatly trimmed, mowed, pruned and cultivated, and watering and fertilizing all landscaping plants so as to keep them alive and attractive. All landscaped areas and natural terrain shall be kept free of trash, weeds and unsightly material. Each Owner shall maintain in good condition and repair all paved and concrete areas, including walkways, driveways, roadways and parking areas, located on the Owner's Lot or Parcel.

6.17 Dust Control. The areas on each Lot or Parcel which are not improved with buildings ("Clear Areas") shall be landscaped in accordance with the Design Guidelines. Until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition, free of weeds and debris. The Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass (where permitted by the Design Guidelines), ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain its Lot(s) and Parcel(s) in a manner which minimizes the possibility of dust being transmitted into the air and over adjacent properties.

6.18 Nuisances. No Owner shall permit rubbish or debris of any kind to accumulate upon its Lot or Parcel (and shall not place or permit to be placed any rubbish or debris of any kind on areas adjacent to its Lot or Parcel, and shall not allow rubbish or debris to be transmitted from its Lot or Parcel onto adjacent areas, including Common Areas,) in a manner which creates a nuisance or renders any such property or activity thereon or any adjacent property unsanitary, unsightly or offensive. No loud, noxious or offensive activity shall be carried on or permitted on any Lot or Parcel, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or Parcel or to The Property, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Committee shall have the right to determine, in its sole discretion, whether the

provisions of this Section have been violated. Any decision rendered by the Committee shall be conclusive and shall be enforceable in the same manner as other restrictions in this Declaration.

6.19 Construction Activities. Dust from all construction sites shall be controlled at all times by watering down the construction site. Any sandblasting activities shall be restricted to the water-type application. If trucks entering and leaving a construction site track mud or dust on the Common Areas or public streets, the Owner of the Lot or Parcel on which or for whose benefit the construction is being performed shall be responsible for maintaining the public streets (to the extent permitted by the City) or Common Areas (or causing the same to be maintained) in a clean and dust-and-mud-free condition on a daily basis. All such work shall be undertaken only after obtaining the Committee's approval.

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

6.21 Mineral Exploration. No Owner, Occupant or any licensee or assignee thereof shall use any Lot or Parcel in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind.

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

(a) each Owner shall have an equal right to use the Party Walls to the extent such use does not interfere with the other Owner's use and enjoyment thereof;

(b) if a Party Wall is damaged or destroyed through the act or omission of an Owner or the Owner's Occupants, agents, guests or family (whether or not such act is negligent or otherwise culpable), such Owner shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense (provided that this shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any insurer, Occupant, agent, guest or other Person who otherwise may be liable to such Owner);

(c) if any portion of a Party Wall is damaged or destroyed other than by the act of an adjoining Owner or the Owner's Occupants, agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots or Parcels adjoin such portion of the Party Wall to immediately rebuild and repair it, and the expense shall be ratably divided among such Owners based on the amount of linear footage of their respective Lots or Parcels located along such portion of the Party Wall;

(d) if a dispute occurs between Owners regarding a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Committee,



whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final. Notwithstanding any such decision, no Owner is prohibited from seeking indemnity from the party causing the damage;

(e) if any walls or fences are located between any portion of the Property owned by Declarant and Lots and Parcels, then the Owners and Occupants of such Lots or Parcels shall be responsible, at their expense, for all maintenance, repair, painting and replacement of all portions thereof, including both sides and the top of such walls or fences;

(f) this Section does not and is not intended to control or relate to (i) Party Walls between condominium units, or any other wall which separates the interiors of two Dwelling Units or which constitutes an exterior wall of a Dwelling Unit; or (ii) Party Walls between Lots or Parcels and the Common Areas, which are controlled by *Section 13.2* of the Declaration.

**6.23 Utility Lines and Connections.** Except as installed by Declarant, no gas, electric, power, telephone, water, sewer, cable television or other utility or service lines of any nature or kind shall be placed, moved, allowed or maintained without the prior written approval and authorization of the Committee. All utility wires, lines, pipes, conduits, facilities, connections and installations (including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer) shall be installed and maintained underground or concealed in, under or on structures approved in writing in advance by the Committee. No utility meter or apparatus shall be located on any pole or attached to the outside of any building wall which is exposed to view from any street. All transformers shall be placed on or below the surface of the Lot or Parcel. Temporary above-ground power or telephone structures and water lines incident to construction activities and permanent above-ground main power lines (69KV lines or larger), structures and substations of electric utility companies shall be permitted, but only with the prior written approval of the Committee. Unless otherwise permitted by a written agreements executed by Declarant, no Owner or other Person shall be entitled to install utility facilities on portions of the Property owned by Declarant without first obtaining Declarant's written consent.

**6.24 On-Site Grading and Drainage.** No water shall be drained or discharged from any Lot or Parcel, or any building thereon, including by backwashing of pools, spas, fountains, or other similar structures, except in accordance with drainage and grading plans approved by the Committee and all applicable City ordinances. No Owner or Occupant shall interfere with the drainage established for the remainder of the Property or any other property adjacent to the Lot or Parcel.

**6.25 Parking.** It is the intent of Declarant to eliminate on-street parking as much as possible in The Property. Vehicles shall be kept in garages, residential driveways, carports, other designated parking areas approved by the Committee. No vehicle may be parked on a street at any time, except for temporary on-street parking by guests. No vehicle may be parked on a street overnight. The Association may adopt additional parking restrictions and may

establish fines and assessments for their violation, and/or may elect to tow vehicles at the expense of the owner.

6.26 Trucks, Trailers, Campers and Boats. No truck (other than a Family Vehicle truck as defined below), mobile home, bus, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle (hereinafter "Commercial Vehicles") may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area (including driveways or Public Yards of Lots and any Common Area streets) so as to be Visible from Neighboring Property without the prior written approval of the Board, except for: (i) the temporary parking of any Commercial Vehicle on a Lot or street for loading and unloading for a period of not more than twenty-four (24) consecutive hours; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any improvement by the Declarant or any improvement approved by the Board; and (iii) Commercial Vehicles parked completely within enclosed Dwelling Unit garages. A "Family Vehicle" means any domestic or foreign car, station wagon, sport wagon, pick-up truck of less than one (1) ton capacity with camper shells not exceeding eight (8) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle and similar non-commercial and non-recreational vehicles that are used by a Resident for family and domestic purposes and which are used on a regular and recurring basis for basic transportation. The Board may, acting in good faith, designate a Commercial Vehicle as a Family Vehicle, if, prior to use, the Resident petitions the Board to classify the same as a Family Vehicle and the parking of such Vehicle on a Lot will not adversely affect the Property or the Residents.

6.27 Motor Vehicle Repair. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street in the Property, and no inoperable vehicle may be stored or parked on any such Lot or Parcel so as to be Visible From Neighboring Property or on any street; provided, however, that the provisions of this Section shall not apply to: (a) emergency repair of vehicles or (b) the storage of such vehicles in an area approved for such use by the Board or Committee.

6.28 Towing of Vehicles. The Board shall have the right to have any vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid upon demand to the Association by the owner of the vehicle as an Enforcement Assessment. If the vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the manner provided in this Declaration for the collection of Assessments.

6.29 Overhead Encroachment. No structure, tree, shrub, or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or Common Area without the prior approval of the Committee.

6.30 Leasing; Obligations of Tenants and Other Occupants. All Tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws and the rules and regulations of the Association. Each Owner shall cause his, her or its Tenants or other Occupants to comply with this Declaration, the Articles, the Bylaws and the rules and regulations of the Association and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such Tenants or Occupants, notwithstanding the fact that such tenants or Occupants are also fully liable for any violation of each and all of those documents. Except as otherwise approved by the Board, no Owner may lease less than his entire Lot and no Lot may be leased for a period of less than thirty (30) days.

6.31 Ancillary Structures. No storage sheds, gazebos, decks, flag poles, basketball goals or basketball standards or backboards, or other structures ancillary to a main building or improvement may be constructed, erected, installed or maintained on any Lot or Parcel so as to be Visible From Neighboring Property except in accordance with the Design Guidelines.

6.32 Outside Speakers and Amplifiers. No radio, stereo or other broadcast units of any kind and no amplifiers or loudspeakers of any kind shall be placed, allowed or maintained outside, or be directed to the outside of any building or other improvement except in accordance with the Design Guidelines.

6.33 Outside Lighting. No lighting shall be placed, allowed or maintained outside or be directed to the outside of any building or other improvement except in accordance with the Design Guidelines, which may prohibit flood lights.

6.34 Storage. No exterior storage of any items of any kind shall be permitted, except in compliance with the Design Guidelines. Any such storage as is approved and authorized shall be in areas attractively screened or concealed so as to not be Visible from Neighboring Property. This provision shall apply, without limitation, to wood piles, motorcycles, motorcycle trailers, camping trailers, boat trailers, travel trailers, boats, mobile homes, motor homes, recreational vehicles, and unmounted pickup camper units.

6.35 Garages. Every Dwelling Unit must have an attached garage. Garage doors must be kept closed. Garages may not be converted to living or recreational space.

6.36 Variances. The Board may, in its sole discretion, grant variances from the restrictions set forth herein if the Board determines that (a) either (i) a particular restriction would create a hardship or burden on an Owner or Occupant; or, (ii) a change of circumstances has rendered the particular restriction obsolete; and (b) the activity permitted under the requested variance will not have a substantially adverse affect on other Owners and Occupants and is consistent with the high quality of life intended for The Property. The request for a variance must be made in writing and be accompanied by adequate supporting documentation, as determined by the Board. The Board shall approve or disapprove the request, in writing, as promptly as possible under the particular circumstances. All decisions of the Board shall be final and nonappealable.

6.37 Environmental Protections. No Lot nor any facilities on a Lot shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this paragraph, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," or "toxic substances" in: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the Arizona Environmental Quality Act, Laws 1986, Chap. 368; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

6.38 Adjacent Livestock; Agricultural Use. Each owner is hereby notified that livestock and other animals may be permitted to be kept and maintained on the property nearby the Property and farming and other agricultural uses and activities may occur on such nearby property. By acquiring any Lot within the Property, each Owner acknowledges that it has carefully considered the effects of such livestock and other animals and farming and other agricultural uses and activities, together with their attendant noise, odor, dust, and all other effects that may be caused by the maintenance of such livestock and animals and farming and other agricultural uses and activities. Declarant shall have no responsibility or liability for any damage, loss, costs, expenses or fees incurred as a result of any such livestock or animals or farming or other agricultural uses and activities or incidental consequences thereof.

6.39 Declarant Exemption. Nothing contained in this Declaration or in the Association Rules shall be construed to prevent the construction, installation or maintenance by Declarant (or its designated agents and contractors), during the period of development and construction on the Property, of all improvements, landscaping or signs deemed necessary or convenient by Declarant, in its sole discretion, to the development or sale of property within the Property. In addition, nothing contained in this Declaration or in the Association rules shall be construed to prevent the reasonable actions taken by a Declarant for the purpose of developing Lots, building homes and related improvements, operating model homes, and otherwise engaging in the homebuilding business.

## ARTICLE 7

### ORGANIZATION OF ASSOCIATION

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

7.2 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 Bylaws. The initial Board shall consist of three (3) Members or other persons, all of whom shall be appointed by the Declarant. There shall be no cumulative voting for Directors. The Declarant shall have the right to appoint and remove its appointed Directors at any time. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager and/or other staff members to be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to each such manager and/or employee.

7.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Property, interpret this Declaration, and establish procedures for operation of the Association or the administration of this Declaration, provided that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. The Association Rules may also establish reasonable fines and penalties for violation of this Declaration, the Design Guidelines, and the Association Rules. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules, as adopted or amended, shall be available for inspection at the office of the Association. So long as Declarant owns any Lot or Parcel, the Association Rules and any amendments thereto must be approved in writing by Declarant in order to be effective.

7.4 Personal Liability. No Board member, officer, committee member, employee or representative of the Association, nor the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damages, losses, costs, fees (including reasonable attorneys' fees), or any prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, unless such person has failed to act in good faith or has engaged in willful or intentional misconduct.

## ARTICLE 8

### MEMBERSHIPS AND VOTING

8.1 Owners of Lots and Parcels. Every Owner of a Lot or Parcel which is not Exempt Property shall automatically be a Member of the Association. Each Owner shall have One (1) Membership for each Lot owned. Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable. Memberships attributable to a Lot or Parcel shall not be increased because of joint or undivided multiple ownership thereof. Memberships shall be shared by any joint owners of, or owners of undivided interests in, the property interests to which such Memberships are attributable.

8.2 Declarant. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B Membership.

8.3 Voting Classes. The Association shall have two classes of voting Members:

8.3.1 Class A. Class A Members shall be all Members except Declarant (until the conversion of the Declarant's Class B Memberships to Class A Memberships as provided below). Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall be entitled to one (1) vote for each Class A Membership held by the Owner.

8.3.2 Class B. Declarant shall be the Class B Members. For purposes of determining voting rights only (and expressly not for purposes of determining Assessments hereunder), each Class B Member shall be entitled to three (3) votes for each Membership held by it.

The Class B Memberships shall automatically cease and be converted to Class A Memberships upon the happening of the first of the following events:

- (a) The date on which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Members;
- (b) The date which is twenty (20) years after the date this Declaration is Recorded.

In addition, at any time, Declarant may relinquish its Class B Membership and convert such Class B Membership to Class A Membership by notifying the Board in writing.

8.4 Right to Vote. No change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. The votes for each Member must be cast as a single unit; fractional votes shall not be allowed. If a Lot or Parcel is owned by more than one Person and such Owners are unable to agree as to how their vote(s) should be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot or Parcel, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot or Parcel unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. If more than one Person casts or attempts to cast a vote for a particular Lot or Parcel, all such votes shall be deemed void.

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

8.6 Transfer of Class A Membership. Except as otherwise provided in this Declaration, the rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Parcel, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure or other legal process authorized under Arizona law. Any attempt to make a nonapproved form of transfer shall be void. Any transfer of ownership in a Lot or Parcel shall operate to transfer the Membership appurtenant thereto to the new Owner.

## ARTICLE 9

### ASSESSMENTS AND CREATION OF LIEN

9.1 Creation of Assessment Lien: Personal Obligation of Lot or Parcel Owner. Each Owner by acceptance of a deed or other instrument (whether or not it should be so expressed in any such deed or other instrument) for each Lot and Parcel is deemed to covenant and agree, to pay to the Association the Assessments.

The amount and time for payment of the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. The Assessments, together with interest thereon and all costs and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time such Assessments become due and payable.

9.2 Annual Assessments. The Association shall levy annual assessments ("Annual Assessments") which shall be used to promote the recreation, health, safety and welfare of the Owners and Occupants, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration and operation of the Association and the maintenance, repair and replacement of the Common Areas, to establish and maintain appropriate reserve funds, and to otherwise further the interests of the Association as the Board deems appropriate. The amount of the Annual Assessment, subject to *Sections 9.3* and *9.4* hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified herein. Subject to *Sections 9.3* and *9.4*, if the Board determines during any Assessment Period that the funds budgeted for are, or will become, inadequate to meet all expenses for any reason, including, without limitation, nonpayment of Assessments by Members, then the Board may increase the Annual Assessment for that Assessment Period, and the revised Annual Assessment shall commence on the date designated by the Board.

9.3 Rate of Assessment. The amount of any Annual or Special Assessment against each Lot and Parcel shall be fixed at a uniform rate per Membership, except that with respect to Declarant the Annual Assessment per Membership shall be equal to twenty-five percent (25%) of such uniform rate until the earlier of (i) completion of a building on the Lot or

Parcel associated with the Membership, or (ii) two (2) years after acquisition of such Lot or Parcel. If the number of Memberships for any Parcel changes during any Assessment Period, the Annual Assessment attributable to the Parcel shall be prorated based upon the number of days in the Assessment Period that the Parcel was assessed under each number of Memberships. For purposes of determining the amount of Assessments only, the Declarant shall be deemed, with respect to Parcels and Lots owned by Declarant, to have the same number of Memberships it would have if Class A Memberships were issued with respect to Lots and Parcels owned by Declarant.

9.4 Maximum Annual Assessment. The maximum Annual Assessment that may be levied by the Association for any Assessment Period shall be determined as follows:

(a) The maximum Annual Assessment for the initial Assessment Period shall be \$900.00 per Membership (\$75.00 per month).

(b) After the initial Assessment Period, the maximum Annual Assessment for each Membership for any fiscal year of the Association shall be equal to the maximum Annual Assessment for the immediately preceding fiscal year, increased by the greater of:

(i) Twenty percent (20%) of the maximum Annual Assessment in effect during the immediately preceding fiscal year; or,

(ii) The percentage increase, if any, for the immediately preceding year over the year before that in the Consumer Price Index, All Items, All Urban Consumers (1982-84 = 100) published by the United States Department of Labor, or its successor or other similar index.

(c) The maximum Annual Assessment may be increased above the maximum Annual Assessment otherwise determined under *Subsections (a) and (b)* above by a vote of two-thirds (2/3rds) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

(d) Further, notwithstanding the foregoing and to the extent permitted by law, the Board may, without the approval of the Members, increase the Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage maintained by the Association; (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration; and (iii) taxes; notwithstanding the fact that the resulting increase causes the Annual Assessment to exceed the maximum Annual Assessment.

9.5 Special Assessments. The Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of improvements upon or benefiting the Common Areas, including fixtures and



personal property related thereto, any unanticipated expenses of the Association, or any shortfall in Association funds, or for defraying other extraordinary expenses, provided, however, that such Special Assessment must be approved by a vote of two-thirds (2/3rds) of the votes of each class of Members voting in Person or by proxy at a meeting of the Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Memberships.

9.6 Notice and Quorum for Any Action Authorized Under Sections 9.4 and 9.5. Written notice of any meeting of the Members of the Association called for the purpose of conducting a vote required under Sections 9.4 or 9.5 shall be sent to all Owners not less than 30 days nor more than 50 days in advance of such meeting. At such meeting, the presence of Members or of proxies entitled to cast 30% of all of the votes (exclusive of suspended voting rights) of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting shall be called for such purpose, subject to the foregoing notice requirements, and the required quorum at the subsequent meeting shall be one-half of the quorum required at the initially scheduled meeting. The subsequent meeting shall be held within 60 days following the date of the initially scheduled meeting. The meeting may be repeatedly rescheduled in this way, with notice, and the required quorum shall continue to decrease by one-half at each meeting until a quorum is present or represented at a meeting. Each subsequent meeting shall be held within 60 days following the preceding meeting. This Section 9.6 shall apply only to meetings called for the purpose of conducting a vote under Sections 9.4 or 9.5 and the notice and quorum requirements for all other meetings shall be as set forth in the Bylaws.

9.7 Maintenance Assessments. If a particular Lot or Parcel has special characteristics or needs which increase the cost of any maintenance performed by the Association with respect to any Common Areas associated with such Lot or Parcel, the Board shall have the authority to levy and collect Maintenance Assessments against such Lot or Parcel for such additional costs or expenses. In addition, if the Owner of a Lot or Parcel contracts with the Association for the Association, to provide particular maintenance services in regard to such Owner's Lot or Parcel the Board may levy Maintenance Assessments against such Owner's Lot or Parcel for such services.

9.8 Annual Assessment Period. Except as otherwise provided hereinbelow, the Assessment Period shall be the fiscal year commencing on January 1 of each year and terminating on December 31 next following. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence on the first day of the month following acceptance of any Common Areas by the Association, and the Annual Assessments will be prorated according to the amount of time remaining in the Assessment Period.

9.9 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment. No Recorded Assessment Lien shall be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice thereof prior to the commencement of such foreclosure or enforcement. The notice shall be sufficient if addressed to

the Owner at the address of the Owner in the records of the Association. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Parcel changes during an Assessment Period. Any successor Owner shall be given credit for any unrefunded prepayments made by a prior Owner.

9.10 Collection Costs and Interest on Delinquent Amounts. Any Delinquent Amount may have added thereto a late charge equal to the greater of \$15.00 or 10% of such Delinquent Amount. In addition, the Delinquent Amount may, as determined by the Board, bear interest from its due date until paid at a rate per annum equal to (a) 12%, or (b) such other rate as set by the Board from time to time. The Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, all costs, including but not limited to attorneys' fees and costs and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount. The Board may also Record an Assessment Lien against the applicable Lot or Parcel and may establish a fixed fee to be reimbursed to the Association for the Association's cost in Recording such Assessment Lien, processing the delinquency, and Recording a release of a lien. The foregoing fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

9.11 Sanctions. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration or shall be in default in the performance of any other obligation provided or contemplated by this Declaration, the Design Guidelines, the Association Rules, the Bylaws, or the Articles, in addition to all other available remedies, said Owner's right to vote or to hold office and his other rights and privileges as an Owner or as a Member of the Association (including any rights to use of all or a portion of the Common Areas) shall be suspended and shall remain suspended until all such payments are brought current and all such defaults remedied, unless specifically otherwise determined by the Board.

9.12 Statement of Payment. Upon receipt of a written request therefor from any Owner, the Board, within a reasonable time thereafter, shall issue to the requesting party a written statement stating that, as of the date of that statement: (a) all Assessments (including collection fees, interest, costs and attorneys' fee, if any) have been paid with respect to such Owner's Lot or Parcel; or, (b) if such have not been paid, the amount(s) then due and payable. The Association may impose a reasonable charge for the issuance of such statement which must be paid at the time the request for such statement is made. Any such statement shall be conclusive and binding on the Board and the Association with respect to any matter set forth therein.

9.13 Property Not Subject to Assessments. "Exempt Property" shall mean the following portions of the Property:

- (a) All land and improvements owned by or dedicated to and accepted by the United States of America, the State of Arizona, Maricopa County, the City of Phoenix, or any political subdivision of any such jurisdiction, for so long as any such

entity or political subdivision is the Owner thereof or for so long as said dedication remains effective; and

(b) All Common Areas.

Exempt Property shall be exempt from Assessments and the Assessment Lien (except as otherwise provided in this Declaration), and shall have no privileges associated with Membership in the Association or voting rights in the Association, provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Assessments (prorated as of the date it ceased to be Exempt Property) and the Assessment Lien, and shall have voting rights in the Association as otherwise determined in this Declaration. All Exempt Property shall nevertheless be subject to all other provisions of this Declaration, including, without limitation, all controls. The Board may restrict or prohibit the use of the Common Areas (except any rights-of-way or drainage areas) by the Owners of Exempt Property.

9.14 No Exemption of Owner. No Owner of a Lot or Parcel may exempt himself from liability for Assessment levied against his Lot or Parcel or for other amounts which he may owe to the Association by waiver and non-use of any of the Common Areas or by the abandonment of his Lot or Parcel.

9.15 No Offsets. All Assessments shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers.

9.16 Deposit by First Purchaser of Lot. Each Owner of a Lot or Parcel (other than Declarant or a Developer) shall pay to the Association immediately upon becoming the Owner of the Lot or Parcel a sum equal to one-sixth (1/6<sup>th</sup>) of the then current Annual Assessment for such Lot or Parcel (determined on the basis that the Lot or Parcel is owned by an Owner other than Declarant). Funds paid to the Association pursuant to this *Section* shall be used for such items as determined by the Board. Payments made pursuant to this *Section* shall be nonrefundable, shall be in addition to all other Assessments levied hereunder, and shall not be considered as an advance payment of the Annual Assessments.

9.17 Transfer Fee. Each Owner of a Lot or Parcel (other than Declarant) shall pay to the Association immediately upon becoming the Owner of the Lot or Parcel a transfer fee in such amount as is established from time to time by the Board.

## ARTICLE 10

### ENFORCEMENT OF PAYMENT AND THE ASSESSMENT LIEN

10.1 Association Remedies to Enforce Assessments. If any Owner fails to pay when due any Assessments, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof by taking any of the following actions, concurrently

or separately (and by exercising one remedy the Association does not prejudice or waive its right to exercise any other remedy):

(a) Record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs against the applicable Lot or Parcel;

(b) Bring an action at law to recover judgment against the Owner who is personally liable for the Assessments;

(c) Foreclose the Assessment Lien against the appropriate Lot or Parcel in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency). At the Association's option, the Association may bid for and purchase the Lot or Parcel at any foreclosure sale; and/or

(d) Suspend the Owner's voting rights, right to hold office, and right to use and enjoy the Common Areas for the period during which the Assessment remains delinquent.

10.2 Subordination of Assessment Lien. The Assessment Lien shall be superior to all charges, liens or encumbrances which may hereafter be imposed on any Lot or Parcel except that the Assessment Lien shall be subordinate to: (a) the lien of any first mortgage held by or first deed of trust of which the beneficiary is, a lender who has lent funds with the Lot or Parcel as security, or held by the lender's successors and assigns ("First Mortgage"); and (b) the lien for taxes or other governmental assessments which is deemed superior thereto by applicable law. Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, that the sale or transfer of any Lot or Parcel pursuant to any first mortgage or first deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien only as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Parcel, or the Owner thereof, for liability from any Assessment becoming due prior to the sale or transfer nor from the Assessment Lien arising in regard thereto. In addition, no "Event of Foreclosure" (as hereinafter defined) shall relieve the prior Owner of personal liability for any Assessment due prior to the Event of Foreclosure, or impair the Assessment Lien, except that a Person obtaining an interest in a Lot or Parcel through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest. As used herein, an "Event of Foreclosure" shall mean the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by a trustee at a trustee's sale in regard to a mortgage, deed of trust or other encumbrance superior in priority to an Assessment Lien.

## ARTICLE 11

### USE OF ASSOCIATION FUNDS

11.1 Use of Association Funds. In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all funds and property collected and received by

the Association from any source ("Funds") for the common good and benefit of the Property, the Owners and the Occupants. The Funds may be used, among other things, to insure, acquire, construct, alter, clean, maintain, supervise, provide and operate, in any manner whatsoever, any and all land, properties, improvements, services, projects, programs, studies and systems within the Property and the Common Areas as may be necessary, desirable or beneficial to the general common interests of the Owners and Occupants. In connection with the foregoing, the Funds may be used for the administration, office expenses, salaries and other personnel costs of the Association. The Association shall collect and maintain Funds to be held in reserve for any of the uses referred to in this *Section 11.1*.

11.2 Borrowing Power. The Association may borrow money from Declarant or other Persons in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate, and may utilize Funds to repay any such loans.

11.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all Funds received by it in such year, and the Board may carry forward as surplus or hold in reserve (for general purposes or for specified future expenditures) any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in any succeeding year if a surplus or reserves exist from a prior year or years.

## ARTICLE 12

### RIGHTS AND POWERS OF ASSOCIATION

12.1 Rights, Powers and Duties of the Association. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with such rights, powers and duties as may be reasonably necessary in order to effect all of the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

12.2 Association's Rights of Enforcement. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration and any other covenants, conditions, restrictions, or easements provided for in any instrument executed pursuant to this Declaration or in any instrument which indicates that it was intended to be enforced by the Association or by Declarant.

12.3 Contracts with Others. Subject to the restrictions and limitations contained herein, or in the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts or other transactions with other parties, including Declarant or its affiliated companies. Such contracts or other transactions shall not be void or voidable because one or more directors or officers of the Association are employed by, have a financial interest in or are otherwise affiliated with such other parties, including Declarant or its affiliates

(even if such officer(s) or director(s) is present and/or votes at the meeting of the Board or committee which authorizes the contract or transaction), if (a) the fact of such interest has been previously disclosed or made known to the other members of the Board or the committee acting upon such contract or transaction, and (b) the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any management contract entered into by the Association must be terminable, without penalty, by the Association for cause at any time and without cause upon reasonable notice.

12.4 Procedure for Change of Use of Common Areas. Upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Areas is no longer in the best interests of the Owners, the Board shall have the power and right to change the use thereof and in connection therewith to take whatever actions are required to accommodate the new use.

12.5 Procedure for Transfers of Common Areas.

12.5.1 Transfer to a Public Authority or Utility. The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public authority or utility provided that:

(a) such a transfer or dedication does not have a substantial adverse effect on the enjoyment of the Common Areas by the Owners or on the easements and licenses with respect to the Common Areas granted by this Declaration to the Owners;

(b) it is required by (or requested in connection with) a Recorded subdivision plat, a zoning stipulation or an agreement with the City; and

(c) if the portion of the Common Area to be dedicated or transferred is owned in fee by Declarant and is subject to an easement or lease in favor of the Association, the transfer or dedication has been approved by the Declarant.

12.5.2 Minor Transfers of Common Areas. The Association shall have the authority to transfer minor portions of the Common Areas to non-public Persons in order to correct encroachment and boundary problems that may arise in connection with the initial development of the Property upon a Resolution by the Board finding that the relevant Common Areas are minor in size, their transfer will not have a substantial adverse effect on the Owners, and their transfer will assist the orderly initial development of the Property by resolving encroachment or boundary problems.

12.5.3 Other Transfers. Except as authorized in *Subsections 12.5.1 and 12.5.2*, the Association shall not exchange the Common Areas for other property or interests which become Common Areas or abandon, mortgage, or otherwise transfer Common Areas except upon:

(a) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Areas is no longer in the best interests of the Owners, and that the change desired shall be for their benefit and shall not substantially adversely affect them; and

(b) the approval of such resolution by not less than two-thirds (2/3rds) of the votes of each class of Members.

#### 12.6 Bulk Service Agreements.

(a) 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 one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners, residents and tenants of Lots, cable television, community satellite television or other electronic entertainment, information or communication services or any other service to the Lots or Owners: (a) which might not otherwise be generally available to such Owners, residents and tenants; (b) at rates or charges lower than might otherwise generally be charged to Owners, residents and tenants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners, residents and tenants generally; or (d) any combination of the foregoing.

(b) If all Lots are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly). If all Lots are not served by a particular Bulk Service Agreement, the Board shall have only the billing option described in clause (b) above.

(c) Declarant, for each Lot, hereby covenants and agrees, and each Owner other than Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot) by the Board pursuant to this Section, and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) 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 amounts, shall be secured by the lien for

Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each person or entity who was an Owner of the Lot at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a person or entity controlling, controlled by or under common control with the Owner transferring title).

(d) No Owner of a Lot covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot under this Section, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no building has been completed.

(e) "Bulk Provider" means a private, public or quasi-public utility or other entity which provides, or proposes to provide, cable television, community satellite television or other electronic entertainment, information or communication services or any other service to the Lots or Owners pursuant to a "Bulk Service Agreement" (as defined below).

(f) "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television or other electronic entertainment, information or communication services or any other service to the Lots or Owners.

(g) As long as there is a Class B Membership, the Board shall be entitled to enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant, unless it shall agree in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any such cable television, community satellite television or electronic entertainment, information or communication services. After there shall no longer be a Class B Membership, the Board shall not, without the approval of Members holding at least fifty-one percent (51%) of all Class A Membership votes represented in person or by proxy at an annual or special meeting of the Members of the Association, enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant, unless it shall agree in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any such cable television, community satellite television or electronic entertainment, information or communication services, but nothing in this Section shall prevent the Board from entering into, or require approval by the Members of, any Bulk Service



Agreement which imposes on the Association or its Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Casa Grande, Arizona, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

## ARTICLE 13

### MAINTENANCE

#### 13.1 Common Areas and Public Rights-of-Way.

13.1.1 Areas of Association Responsibility. The Association, or its duly designated representative, shall maintain and otherwise manage all Common Areas; provided however, the Association shall not be responsible for maintaining or managing any Common Areas which are part of Lots or Parcels unless:

(a) the construction and landscaping of such Common Areas is complete;

(b) such Common Areas are deeded to the Association or are located within easements granted to the Association;

(c) the Association agrees in writing to assume the responsibility for such maintenance, in which event the Association's agreement to assume responsibility shall be subject to the conditions, if any, set forth in such instrument; and

(d) in the case of Common Areas deeded to the Association, the Owner of such land provides the Association, at no expense to the Association, a standard coverage owners policy of title insurance in an amount reasonably acceptable to the Association (but in no event less than the minimum amount, if any, required for such policies by VA or FHA, if VA or FHA are involved in the insurance or guarantee of loans affecting portions of the Property) issued by a title insurance company authorized to transact such business in the State of Arizona, insuring that the Association is the Owner of the title to the transferred land subject only to such liens or other matters as may be approved by the Association.

Until the Association agrees to assume the responsibility for such maintenance, the Owner of the Lot or Parcel on which such Common Areas are located shall be responsible for such maintenance, or in the event that the Common Area is owned by the Association the Owner of the Lot or Parcel for whose benefit such Common Areas were constructed shall be responsible for such maintenance. In addition, the Association shall not be obligated to maintain (but may elect to do so) areas which are to be maintained by the City, an improvement district or other

governmental entity or by a public utility, or are the responsibility of a Lot or Parcel Owner pursuant to this *Subsection 13.1.1* or *Subsection 13.1.2*.

13.1.2 Delegation of Responsibilities. The Board shall have the sole discretion to determine whether the Association or an individual Owner should be responsible for maintenance of certain Common Areas or public rights-of-way considering cost, uniformity of appearance, location and other relevant factors. The Board may also cause the Association to contract with others for the performance of such maintenance and other obligations of the Association and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners or to have Owners provide maintenance services to the Association in exchange for the payment of such fees as the Association and the Owner may agree.

13.1.3 Standard of Care; Disclaimer of Liability. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas so that the Property will reflect a high degree of pride of ownership. The Board, however, shall be the sole judge as to the appropriate level of maintenance of all Common Areas by the Association. Notwithstanding any duty the Association may have to maintain and repair the Common Areas, the Association, or Declarant shall not be liable for any injury or damage caused by a latent condition or by any Member, Owner, Occupant or other Person. Neither the Association nor Declarant shall be liable to any Person for any claim, injury or damage arising from the use of the Common Areas (including without limitation, paths, playground areas or other equipment) and the same shall be used at the risk of the user. Declarant has no duty or obligation to maintain, operate, manage or repair the Common Areas.

13.2 Walls and Fences. Unless otherwise indicated or unless otherwise expressly agreed in writing by the Association, the following provisions shall apply to walls and fences constructed on or bordering the Common Areas:

13.2.1 Boundary Walls. If any walls or fences are located on the boundary line between Common Areas and Lots or Parcels, then the Association shall be responsible for the maintenance, repair, painting and replacement of the side thereof that faces the Common Areas and the top of such walls or fences, and the Owner or Owners owning the opposite side of the wall or fence shall be responsible for the maintenance, repair, painting and replacement of the opposite side.

13.2.2 Other Walls and Fences. The Association shall be fully responsible for the maintenance of all walls and fences located on the Common Areas which are not located on a boundary line between Common Areas and an Owner's Lot or Parcel. Further, unless otherwise approved in writing by the Board, all walls constructed by an Owner or Occupant must be located entirely within the property line of the Owner's or Occupant's Lot or Parcel. No wall may be located on the Common Areas unless it is part of the Common Areas.

13.2.3 View Walls and Fences. The Association may require that walls and fences constructed on or bordering Common Areas be view walls or view fences designed and built in accordance with the Design Guidelines.

13.3 Assessment of Certain Maintenance Costs. If the need for maintenance or repair of areas maintained by the Association is caused by the willful or negligent act or omission of any Owner (or of the Owner's Occupants, invitees, or guests or of any Person for whom such Owner is legally responsible under applicable state law), the cost of such maintenance or repair shall be added to and become a Maintenance Assessment to which such Owner and such Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien.

13.4 Correction of Violation or Improper Maintenance and Use of Lots and Parcels. If (a) any portion of any Lot or Parcel is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot, Parcel or other area, or is used in a manner which violates this Declaration, or (b) the Owner of any Lot or Parcel fails to perform such Owner's obligations under this Declaration, then the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot or Parcel that unless specified corrective action is taken within a specified time period the Association, at such Owner's cost, may take corrective action itself or may take whatever action is appropriate to compel compliance including, without limitation, imposing reasonable monetary penalties or taking appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association is hereby authorized and empowered, at its sole discretion, to take corrective action, to impose a reasonable monetary penalty, and/or to commence appropriate legal action. The cost thereof, including court costs and attorneys' fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien.

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

## ARTICLE 14

### TERM; AMENDMENTS; TERMINATION

14.1 Term; Method of Termination. This Declaration shall be effective upon Recordation and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date of its Recordation. Thereafter, this Declaration (as amended from time to time) shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time during the initial 50-year term or during any extension thereof if seventy-five percent (75%) of the votes then entitled to be cast of each class of Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall Record a Certificate of Termination, duly executed by the President or Vice President of the Association and attested to by the Secretary of the Association. Upon the Recording of the Certificate of Termination, this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona. So long as Declarant owns any Lot or Parcel, the termination must be approved in writing by Declarant in order to be effective.

#### 14.2 Amendments.

(a) This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent of the then Owners of (i) not less than eighty-five percent (85%) of the Lots within the Property including Lots owned by Declarant, and (ii) not less than a majority of the Lots within the Property which are not owned by Declarant. Such amendment shall be effective upon its Recordation.

(b) Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration without obtaining the approval of any other Owners, Members, or First Mortgagees as may be requested or required by the FHA, VA or any other agency with whom Declarant elects to do business as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot or purchasing loans secured thereby. Any such amendment shall be effected by Declarant Recording a Certificate of Amendment duly executed and acknowledged by Declarant specifying the agency or the lending institution requesting the amendment and setting forth the requested or required amendment(s). Recordation of such a certificate shall be deemed conclusive proof of the agency's or institution's request or requirement and such certificate, when recorded, shall be binding upon all of the Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of planning and development of the Property. If any amendment requested or required pursuant to the provisions of this section deletes, diminishes or alters such control, Declarant

shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions which shall be binding upon the Property and all Owners, Members and First Mortgagees without a vote of the Owners, Members or First Mortgagees.

14.3 Effectiveness of Amendment. Any Amendment shall be effective as of the date it is Recorded notwithstanding any other provision hereof and notwithstanding the holding under Arizona Court of Appeals Case Scholten V. Blackhawk Partners, 184 Ariz. 326 (App. 1995).

## ARTICLE 15

### EMINENT DOMAIN AND INSURANCE (COMMON AREAS)

15.1 Eminent Domain. The term "Taking" as used in this *Section* shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Areas, the Owners hereby appoint the Board and such persons as the Board may designate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association and shall constitute Funds of the Association. In the event of a substantial Taking of the Common Areas, the Board may, in its sole discretion, retain any award as part of the Funds of the Association or distribute pro rata all or a portion thereof to the Members and holders of liens and encumbrances, as their interests may appear of Record.

15.2 Association's Authority to Purchase Insurance. The Association shall purchase and maintain such property damage and liability insurance upon the Common Areas and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any Member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions. Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers' liability insurance covering all officers and directors of the Association, as well as all regular and alternate members of the Committee, in amounts and on terms adequate to permit the Association to meet its obligations to indemnify such persons pursuant to the Articles and Bylaws.

15.3 Individual Responsibility; Disclaimer of Liability. It shall be the responsibility of each Owner or Occupant to provide insurance for himself on his real or personal property interests on or within the Property, including, but not limited to, additions and improvements thereto, furnishings and personal property thereon, and for his personal liability.

No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas. The Association, any Board member, and Declarant shall not be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

15.4 Insurance Claims. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association shall be payable to the Association. Any proceeds resulting from damage to the Common Areas shall be used to repair the damage unless otherwise approved by a majority of the votes of each class of Members at a meeting called for such purpose. Any proceeds remaining upon repair of such damage may be retained by the Association as reserves or to reduce future Assessments.

## ARTICLE 17

### ADDITIONAL TERMS

17.1 Enforcement Rights. Any action to enforce this Declaration may be brought by the Declarant or the Board in the name of the Association. If none of the foregoing persons or entities commences an action to enforce any provision under this Declaration within a reasonable time after receipt of a written request from an aggrieved Owner, then the aggrieved Owner may bring such an action in its own name. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by the Declarant, the Association or any Owner.

17.2 Interpretation of the Covenants. Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. 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.

17.3 Severability. If any provision of this Declaration or any application thereof shall be invalid or unenforceable, the remainder of this Declaration and any other application of such provision shall not be affected thereby.

17.4 Rule Against Perpetuities. If any of the interests, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the Rule

against Perpetuities or any related rule, then such provision shall continue until the later of (a) twenty-one (21) years after the death of the survivor of the descendants of the former President of the United States George Herbert Walker Bush who are living on the date this Declaration is Recorded, or (b) the number of years specified in A.R.S. § 14-2901(A)(2), or any successor statutory perpetuities savings period, from the date this Declaration is Recorded.

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

17.6 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine, feminine or neuter genders, or the singular or plural number, shall each include the others.

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

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

17.9 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding and in addition to the disclaimers respecting drainage as set forth above, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can, or will be, carried out, or that any land now owned or hereafter acquired by it is, or will be, subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is, or will be, committed to, or developed for, a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect. Declarant makes no representations or warranties that the use of any Property subject to this Declaration will not be changed in the future. In addition, Declarant makes no representations or warranties that a guard service will be provided or, if guard service is provided, that it will be provided during any particular hours or will be continued in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser of a Lot by real estate brokers or salesmen representing the Declarant shall be deemed to create any implied covenants or restrictions with respect to the use of any Property.

17.10 Indemnification/Acknowledgment. **THE OWNERS, AS DEFINED HEREIN, ACKNOWLEDGE THAT: (1) THE PROPERTY SUBJECT TO THIS**

**DECLARATION CONTAINS COMMON AREAS; (2) THE COMMON AREAS ARE INTENDED SOLELY FOR ACCESS, AESTHETIC PURPOSES AND LIMITED RECREATIONAL USE; (3) THE COMMON AREAS POSSESS CERTAIN INHERENT DANGERS FROM WHICH THE OWNERS MUST TAKE PRECAUTIONS TO PROTECT THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS AND OTHERS; (4) NO SAFETY PERSONNEL WILL PATROL THE COMMON AREAS AND THE OWNERS ASSUME THE RISK AND THE RESPONSIBILITY OF PROTECTING THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS OR OTHERS; AND (5) THE OWNERS WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, INJURIES, DAMAGES, EXPENSES AND COSTS, INCLUDING INTEREST AND ATTORNEYS' FEES, INCURRED BY OR CLAIMED AGAINST THE DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS UNDER ANY LAWS ARISING IN ANY WAY FROM OR IN CONNECTION WITH THE COMMON AREAS.**

17.11 FHA/VA Approval. If this Declaration has been approved by the FHA or the VA in connection with any loan programs made available by FHA or VA in regard to the Property, then for so long as there is a Class B Member of the Association, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: (a) dedications or other conveyances of Common Areas; (b) amendments to this Declaration; (c) adding additional land to the Property; and (d) mortgaging of Common Areas. FHA or VA approval of an amendment to the Declaration shall be deemed given if (a) application for approval is made in writing together with written certification complying with FHA or VA guidelines stating that the Declaration, as amended, will continue to comply with applicable FHA or VA requirements and (b) FHA and/or VA does not remove the Planned Unit Development for the Property from its list of approved projects or otherwise object to the application within thirty (30) days following such application.

## ARTICLE 18

### DISPUTE RESOLUTION

18.1 Agreement to Resolve Certain Disputes Without Litigation. As used in this *Article 18*, the term "Claim" shall mean: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Area, or any Lot or any improvements situated thereon, including, without limitation, any claim or cause of action that the Common Areas are defective or that the Declarant (or any builder) or its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; of (b) any claim or cause of action against the Declarant (or any builder) or any employee, agent, director, member or officer of Declarant (or any builder) arising out of or in any way related to the development of the Property or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The Association, the Declarant, all Owners,



Occupants, Residents and other Persons bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Article (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Article shall apply to all Claims.

18.2 Notice of Claim. Any Bound Party having or alleging to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim.

In the event the Claimant is the Association and the Claim involves an Alleged Defect (as defined in *Section 18.5*), the Association must provide written notice to all Members prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against a Bound Party which notice shall (at a minimum) include: (a) a description of the Claim, (b) a description of the attempts of the Declarant or other Bound Parties to correct such Alleged Defect and the opportunities provided to Declarant or other Bound Parties to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action, (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle or responses to offers to settle made either by the Association or a Bound Party, and (i) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

18.3 Mediation. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of the American Arbitration Association or such other mediator or mediation service agreed upon by the Parties.

If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

18.4 Binding Arbitration. In the event a Claim is not resolved by Mediation, the Claimant shall have fifteen (15) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. If the Claimant submits the Claim to binding arbitration in accordance with this Section, the arbitration shall be conducted in accordance with the following:

(a) Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").

(b) Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, *et seq.* In the event of a conflict between the AAA Rules and this *Section 18.4*, the provisions of this *Section 18.4* shall govern.

(c) Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this *Section 18.4* as the "Arbitrator."

(d) Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.

(e) Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection (c) above.

(f) Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's

usual hourly rate, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the Parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the Parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) Final Award. The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

18.5 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by the Declarant or other Bound Party of a Claim Notice, the Declarant or other Bound Party shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residence constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant or other Bound Party, to correct, repair and/or replace the alleged deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot, or any improvement constructed on the Common Area or a Lot which is the basis for the Claim (the "Alleged Defect"). In conducting such inspection, testing, repairs and/or replacement, Declarant or other Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this Section shall be construed to impose any obligation on the Declarant or other Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant or other Bound Party is not otherwise obligated under applicable law or any limited warranty provided by the Declarant or other Bound Party in connection with the sale of the Lots and/or the improvements constructed thereon. The right of the Declarant and other Bound Parties to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Declarant or other Bound Party. In no event shall any statutes of limitations be tolled during the period in which the Declarant or other Bound Party conducts any inspection or testing of any Alleged Defects. The rights of the Declarant and other Bound Parties under this Section shall also extend to their respective employers, agents, contractors, subcontractors and suppliers.

18.6 Use of Funds. In the event the Association recovers any funds from the Declarant or any other Person as a result of a claim involving an Alleged Defect, the funds shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect, and any excess funds shall be paid into the Association's reserve fund.

18.7 Approval of Litigation. The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with *Section 18.2*.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed.

CORNERSTONE ROGERS RANCH, LLC, an Arizona limited liability company

By: Cornerstone Homes and Development, Inc., an Arizona corporation, Manager

By: Todd Tucker  
Todd Tucker, President of Manager

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

On this 16<sup>th</sup> day of May, 2005 before me, the undersigned notary public, personally appeared Todd Tucker, who acknowledges to be the President of Cornerstone Homes and Development, Inc., an Arizona corporation, who is the Manager of Cornerstone Rogers Ranch, LLC, an Arizona limited liability company, and that, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

Peggy Klassen  
Notary Public

My Commission Expires:



CONSENT AND AGREEMENT OF OWNER

The undersigned HIGHLAND RANCH CONSTRUCTION COMPANY, L.L.C., an Arizona limited liability company, as the current owner of the Property described in the foregoing Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Rogers Ranch Unit 5, hereby consents and agrees to the foregoing Declaration and joins in the Declaration of the Property to be subject to all terms and conditions set forth therein.

HIGHLAND RANCH CONSTRUCTION  
COMPANY, L.L.C., an Arizona limited liability  
company

By: Mark D. R.  
Name: MARK D. ROGANEE  
Title: Agent

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

On this the 10<sup>th</sup> day of May, 2005, before me, the undersigned Notary Public, personally appeared MARK D. ROGANEE who acknowledged him/herself to be the AGENT of Highland Ranch Construction Company, L.L.C., an Arizona limited liability company, on behalf of said company.

Janice M. Kramer  
Notary Public

My commission expires:  
Feb 10, 2006



EXHIBIT "A"

Rogers Ranch Unit 5:

Lots 1 through 116, inclusive and tracts A, B and C, of Rogers Ranch Unit 5, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 670, of Maps, page 37.