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DECLARATION OF HOMEOWNER BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SIESTA FOOTHILLS

(A Single Family Subdivision)

This Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for Siesta Foothills ("**Declaration**") is made as of April 1, 2003 ("**Declaration Date**") by Siesta Foothills Investors L.L.C., an Arizona limited liability company ("**Declarant**").

BACKGROUND

A. Declarant is the owner of the real property ("**Property**" or "**Project**") that is depicted on the Plat and legally described on **Exhibit "A"** attached to this Declaration. The Property is located in the City of Phoenix, County of Maricopa, State of Arizona.

B. Declarant desires to provide for the construction of a subdivision consisting of detached single-family residences, common areas, and other facilities.

C. Declarant includes in this Declaration and initially imposes these benefits, covenants, conditions, and restrictions upon only the lots and those common area tracts described on **Exhibit "A"**.

D. Declarant intends that this Declaration and the other Project Documents will facilitate a general plan for the development for the Property.

DECLARATION

Declarant declares that the Lots are to be held, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, and conveyed subject to the following benefits, burdens, rights, reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges, duties, obligations, and liens (collectively referred to as "**covenants and restrictions**"). The covenants and restrictions are for the purpose of protecting the value, attractiveness, and desirability of the Property, and the covenants and restrictions will benefit, burden, and run with the title to the Property and will be binding upon all parties having any right, title, or interest in or to any part of the Property and their heirs, successors, and assigns. The covenants and restrictions will inure to the benefit of each Owner. The Declarant further declares as follows:

ARTICLE I

DEFINITIONS

Section 1.01. "Ancillary Unit" means any of the following types of permanent or temporary items that are not part of the Detached Dwelling Unit and related improvements originally constructed by the Declarant: basements, cellars, guest houses, hobby houses, storage sheds (portable or permanent), stables, wood sheds, outbuildings, shacks, barns, garages, living quarters, cabanas, ramadas, gazebos, carports, covered patios, or any structures or items of any similar type.

Section 1.02. "Architectural Committee" means the committee established pursuant to Article VII of this Declaration and the provisions of any other Project Documents.

Section 1.03. "Architectural Committee Rules" means any rules, regulations, or design guidelines that may be adopted or amended by the Architectural Committee.

Section 1.04. "Areas of Association Responsibility" means those areas of the Project or adjoining right-of-ways that, while not part of the Common Area owned by the Association, are required to be maintained by the Association either pursuant to: (i) this Declaration, the Plat, or any Supplemental Declaration; (ii) any written agreement with any utility provider; or (iii) any zoning or development stipulation or requirement of the City.

Section 1.05. "Articles" means the Articles of Incorporation of the Association that have been or will be filed in the office of the Corporation Commission of the State of Arizona, as may be amended from time to time in the manner set forth in the Articles.

Section 1.06. "Assessment" (whether capitalized or not) means the Annual Assessments, Special Assessments, and Other Assessments described and defined in the Project Documents.

Section 1.07. "Association" means Siesta Foothills Homeowners Association, Inc., which has been or will be incorporated by Declarant and/or others as a nonprofit Arizona corporation, and the Association's successors and assigns.

Section 1.08. "Association Rules" means any rules and regulations adopted by the Association, as the rules and regulations may be amended from time to time.

Section 1.09. "Board" and **"Board of Directors"** means the Board of Directors of the Association.

Section 1.10. "Bylaws" means the bylaws of the Association, as may be amended from time to time in the manner set forth in the Bylaws.

Section 1.11. "City" means the City of Phoenix, Arizona, a municipal corporation, and all applicable councils, boards, commissions, departments, authorities, and agencies of the municipality.

Section 1.12. "Commercial or Recreational Vehicles" means any of the following types of vehicles that are owned, leased, or used by an Owner of a Lot or any of Owner's Occupants: (i) commercial truck, government vehicle, tow truck, tractor, bulldozer, crane, bus, ambulance, tour jeep, trolley, commercial delivery van, commercial pickup truck with a manufacturer's capacity rating of more than one (1) ton, semi, semitrailer, or similar commercial vehicle; and (ii) snowmobile, wagon, freight trailer, flatbed, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, jet ski, dune buggy, go cart, golf cart (whether licensed for street use or not), all-terrain vehicle, pickup truck with camper shell (whether or not equipped with sleeping quarters), pontoon, canoe, raft, house boat, or similar recreational vehicles or equipment.

Section 1.13. "Common Area" means all of the real property described on the Plat as common area tracts for ownership and maintenance by the Association and all real property that may be annexed from time to time into the Project as additional common area tracts for ownership and maintenance by the Association. The **"Common Area"** does not include the real property described on the Plat (or any subsequent plat affecting any annexed property) as individual Lots, public streets, or other publicly dedicated areas. The term **"Common Area"** also includes all structures, facilities, furniture, fixtures, improvements, and landscaping, if any, located on the common area tracts, and all rights, easements, and appurtenances relating to the common area tracts owned by the Association.

Section 1.14. "Declarant" means Siesta Foothills Investors L.L.C., an Arizona limited liability company, its successors and assigns, or any person or entity to whom all of Declarant's rights reserved to the Declarant hereunder are assigned in accordance with the provisions hereof. The Declarant's rights shall only be assigned by a written, recorded instrument expressly assigning those rights.

Section 1.15. "Declaration" means this Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions and the covenants and restrictions set forth in this entire document (in entirety or by reference), as may be amended from time to time in the manner set forth below.

Section 1.16. "Detached Dwelling Unit" means all buildings located on a Lot and used or intended to be used for Single Family Residential Use, including any garages, carports, open or closed patios, and basements as originally constructed by the Declarant.

Section 1.17. "Family Vehicles" means any domestic or foreign cars, station wagons, sport wagons, pickup trucks, vans, mini-vans, jeeps, sport utility vehicles, alternative fuel vehicles, motorcycles, and similar non-Commercial and non-Recreational Vehicles that are owned, leased, or used by the Owner of the applicable Lot or the Owner's Occupants for family, personal, and domestic purposes only and not for any commercial purpose.

Section 1.18. "Hillside Lots" means Lots 7, 8, and 9 as depicted on the Plat.

Section 1.19. "Institutional Guarantor" means, if applicable to the Project, a governmental insurer, guarantor, or secondary market mortgage purchaser such as the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Federal National Mortgage Association (FNMA) that insures, guarantees, or purchases any note or similar debt instrument secured by a First Mortgage. An Institutional Guarantor will be entitled to vote on those matters that require the approval or consent of the Institutional Guarantors if the Institutional Guarantor notifies the Association in writing of its desire to vote and its address for delivery of all Association notices.

Section 1.20. "Lot" means any one of the lots that is described and depicted on the Plat and that is initially subjected to this Declaration and includes any other lot that in the future may be included within the Project by an Annexation Amendment or Supplemental Declaration as provided in this Declaration.

Section 1.21. "Member" means each and every Owner of a Lot.

Section 1.22. "Mortgage" (whether capitalized or not) means the consensual conveyance or assignment of any Lot, or the creation of a consensual lien on any Lot, to secure the performance of an obligation. The term **"Mortgage"** includes a deed of trust, mortgage, assignment, or any other agreement for the purpose of creating a lien to secure an obligation, and also includes the instrument evidencing the obligation. The term **"First Mortgage"** means a Mortgage held by an institutional lender that is the first and most senior of all Mortgages on the applicable Lot.

Section 1.23. "Mortgagee" (whether capitalized or not) means a person or entity to which a Mortgage is made and will include a holder of a promissory note, a beneficiary under a deed of trust, or a seller under an agreement for sale. The term **"First Mortgagee"** means a Mortgagee that is the first and most senior of all Mortgagees upon the applicable Lot. The term **"Eligible Mortgage Holder"** means a First Mortgagee that has informed the Association in writing of the First Mortgagee's address and that has requested notification from the Association on any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

Section 1.24. "Mortgagor" means a person or entity who is a maker under a promissory note, a mortgagor under a mortgage, a trustor under a deed of trust, or a buyer under an agreement for sale, as applicable.

Section 1.25. "Nonrecurring And Temporary Basis" means the parking of vehicles of any type either: (i) for the temporary purpose of loading and unloading items for permitted uses on the Lot; (ii) for temporary parking by guests or invitees of an Owner that do not involve overnight parking; or (iii) for temporary parking of the vehicles of an Owner or the Owner's Permittees for cleaning or special events that do not involve overnight parking and that do not occur on a frequent or repetitive basis.

Section 1.26. **"Owner"** means the record owner, whether one or more persons or entities, of a fee simple legal title to any Lot. The term **"Owner"** does not include those persons having an interest in a Lot merely as security for the performance of an obligation or duty (i.e., a mortgagee). In the case of Lots in which the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, §§ 33-801, *et seq.*, the **"Owner"** of the Lot will be deemed to be the trustor. In the case of a Lot covered by an Agreement for Sale of Real Property as described in A.R.S., §§ 33-741, *et seq.*, the buyer of the Lot will be deemed to be the **"Owner"**. The term **"Owner's Occupants"** means all persons that reside on a full or part-time basis in the Detached Dwelling Unit located on the Owner's Lot (which, by way of example, could include the Owner's family members, tenants, or other permitted occupants). The term **"Owner's Permittees"** includes the Owner's Occupants and all guests, tenants, licensees, invitees, occupants, and agents that use the Owner's Lot or other portions of the Project (including Common Area) with the implied or express consent of an Owner.

Section 1.27. **"Permitted Satellite Dishes and Exterior Antennas"** means: (i) any antenna that is designed to receive direct broadcast service (DBS), including direct-to-home satellite services, of one meter or less in diameter; (ii) any antenna that is designed to receive video programming services via multi-point distribution services (MMDS) of one meter or less in diameter; (iii) an antenna that is designed to receive television broadcast signals; or (iv) any similar antenna or satellite dish, the residential use of which is protected under the Telecommunications Act of 1996 and any applicable rules, as either may be amended.

Section 1.28. **"Person"** (whether capitalized or not) means a natural person, a corporation, a partnership, a trust, or other legal entity.

Section 1.29. **"Personal Vehicles"** means any domestic or foreign cars, station wagons, sport wagons, pickup trucks, vans, mini-vans, jeeps, sport utility vehicles, alternate fuel vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are owned, leased, or used by the Owner of the applicable Lot or the Owner's Occupants.

Section 1.30. **"Plat"** means the Final Plat for Siesta Foothills, recorded in Book 627 of Maps, Page 49, Official Records of Maricopa County, Arizona, as it may be amended from time to time pursuant to this Declaration, and any additional plats that may be referred to in any Annexation Amendment or Supplemental Declaration.

Section 1.31. **"Project Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Committee Rules, and the Plat, collectively, as any or all of the foregoing may be amended from time to time.

Section 1.32. **"Recreational Vehicle"** means any of the following types of vehicles or equipment that may be located or stored from time to time on an Owner's Lot: boats, snowmobiles, jet skis, all terrain vehicles, boat trailers, golf carts (whether licensed for street use or not), flatbeds, automobile trailers, pickup trucks with camper shells (whether or note equipped with sleeping quarters), pontoons, canoes, rafts, house boats, mobile homes, motor homes, portable camping trailers, park trailers, travel trailers, portable truck campers, dune buggies, go carts, or similar recreational vehicles or equipment.

Section 1.33. **"Screened From View"** means that the object in question is appropriately screened when viewed from Common Area and public and private streets by a gate, wall, shrubs, or other approved landscaping or screening devices. The Architectural Committee will be the sole judge as to what constitutes an object being Screened From View and appropriately screened, subject only to the right to appeal the Architectural Committee's decision to the Board under Section 7.07 below. An object may be Screened From View, in the opinion of the Architectural Committee, even though the object is Visible From Neighboring Property and may be seen through the approved screening.

Section 1.34. "Side Yard Parking Area" means that portion of the Enclosed Side Yard of a Lot that has been designated by the Architectural Committee as a place for the parking of Recreational Vehicles or Personal Vehicles. The plans and specifications for any Side Yard Parking Area must be approved in writing by the Architectural Committee prior to its installation or construction.

Section 1.35. "Single Family" means a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than four adult persons not all so related who maintain a common household in a Detached Dwelling Unit located on a Lot.

Section 1.36. "Single Family Residential Use" means the occupancy or use of a Detached Dwelling Unit and Lot by a Single Family in conformity with the Project Documents and the requirements imposed by applicable zoning laws or other state, county, or municipal rules, ordinances, codes, and regulations.

Section 1.37. "Site Plan" means the Final PRD Site Plan for Siesta Foothills as approved by the City.

Section 1.38. "Visible From Neighboring Property" means that an object is or would be clearly visible without artificial sight aids to a person six feet tall, standing on any part of the Property at proper grade adjoining the Lot or the portion of the Property upon which the object is located.

Section 1.39. "Yard" (whether capitalized or not) means all portions of the Lot other than the portions of the Lot upon which the Detached Dwelling Unit or an Ancillary Unit is constructed. The term **"Private Yard"** means the portion of the yard that generally is not Visible From Neighboring Property and is shielded or enclosed by walls, fences, and similar structurally enclosed items (typically, a back or enclosed side yard of the Lot). The term **"Public Yard"** means that portion of the Yard that is Visible From Neighboring Property, whether located in front of, beside, or behind a Detached Dwelling Unit (typically, a front yard or open side yard of a Lot). The term **"Enclosed Side Yard"** means the enclosed side yard portion of a Lot that is located behind, when viewed from the street in front of the Detached Dwelling Unit, the front wall of a Lot. The Architectural Committee will be the sole judge as to what constitutes a side yard and an Enclosed Side Yard in accordance with this Declaration.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREA

Section 2.01. Owners' Easements of Enjoyment. Every Owner will have a non-exclusive right and easement of use and enjoyment in and to the Common Area, in common with all other persons entitled to use the Common Area under the terms and conditions of the Project Documents. The Common Area, however, is not intended to be used as a place of public accommodation. An Owner's right and easement to use and enjoy the Common Area will be appurtenant to and pass with the title to every Lot and will be subject to the limitations and restrictions contained in the Project Documents, including the following rights in favor of the Association:

(a) ***Charges and Regulations.*** The right of the Association to charge reasonable admission and other fees for the use of the Common Area and to publish and enforce rules and regulations regarding the use of the Common Area; the right of the Association to limit the number of the Owner's Permittees who use the Common Area; the right of the Association to limit the number and type of pets that use the Common Area; and the right of the Association to hold the Owners accountable for the conduct of the Owner's Permittees and pets;

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(b) ***Suspension of Voting and Usage Rights.*** The right of the Association to suspend the voting rights of any Owner and to suspend the right of any Owner or the Owner's Permittees to the use of the Common Area if any assessment against that Owner or Owner's Lot is not paid within 15 days after its due date or if there exists any uncured non-monetary infraction of the Project Documents, subject to compliance with any applicable notice and hearing requirements contained in the Bylaws;

(c) ***Dedication/Grant.*** The right of the Association to dedicate or grant an easement (covering all or any part of the Common Area) to the City or any provider utility company for the purposes, and subject to the conditions, that may be established by the Declarant during the period of Declarant Control (as defined in Section 3.02) and, after the period of Declarant Control, by the Board. Except for those easements reserved in, created by, or described in this Declaration or the Plat, no dedications or easements may be created over all or any part of the Common Area unless the dedication or easement is approved at a duly called regular or special meeting by an affirmative vote in person or by proxy of two-thirds (2/3) or more of the total number of eligible votes in each class of Members and unless the instrument evidencing the dedication or grant is executed by an authorized officer of the Association and recorded in the proper records in Maricopa County; and

(d) ***Declarant Use.*** The right of the Declarant and its agents and representatives, in addition to their rights set forth elsewhere in this Declaration and the other Project Documents, to the nonexclusive use, without extra charge, of the Common Area for sales, display, and exhibition purposes both during and after the period of Declarant Control.

Section 2.02. Delegation of Use. Subject to and in accordance with the Project Documents, any Owner may delegate to the Owner's Permittees the rights of the Owner to use and enjoy the Common Area.

Section 2.03. Conveyance of Common Area. By a date no later than the earlier to occur of the date of the conveyance of the first Lot within the Project to a Class A Member or the date that an Institutional Guarantor first insures, guarantees, or purchases a loan with respect to a Lot within the Project, the Common Area will be conveyed by Declarant to the Association by the delivery of a special warranty deed, free and clear of all monetary liens, but subject to the covenants and restrictions of the Project Documents. Once conveyed by the Declarant to the Association, the Common Area will be maintained by the Association at the common expense of the Owners, all as detailed in Article IV below.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.01. Membership. Every Owner of a Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, is a Member of the Association, is bound by the provisions of the Project Documents, is deemed to have personally covenanted and agreed to be bound by all covenants and restrictions contained in the Project Documents, and is deemed to have entered into a contract with the Association and each other Owner for the performance of the respective covenants and restrictions. The personal covenant of each Owner described in the preceding sentence will be deemed to be in addition to the real covenants and equitable servitudes created by the Declaration, and this personal covenant of each Owner will not limit or restrict the intent that this Declaration benefit and burden, as the case may be, and run with title to, all Lots and Common Area covered by this Declaration. Membership in the Association will be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment. Upon the permitted transfer of an ownership interest in a Lot, the new Owner will automatically become a Member of the

Association. With the exception of Declarant, membership in the Association will be restricted solely to Owners of Lots.

Section 3.02. Class. The Association will have two classes of voting membership:

(a) ***Class A.*** Class A members will be all Owners except Declarant. Class A members will be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all joint owners will be Members; however, for all voting purposes and quorum purposes, they will together be considered to be one Member. The vote for any jointly owned Lot will be exercised as the joint owners determine, but in no event will more than one vote be cast with respect to any Lot. Any attempt to cast multiple votes for a given Lot will result in the invalidity of all votes cast for that Lot.

(b) ***Class B.*** The Class B member will be the Declarant. The Declarant will be entitled to cast three votes for each Lot owned by the Declarant. The Class B membership will cease and be converted to Class A membership upon the happening of any of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership first equals or exceeds the total votes outstanding in the Class B membership;

(ii) The date that is 6 years after the date of the close of escrow on the first Lot sold by Declarant; or

(iii) When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

(c) Upon the conversion of Declarant's Class B membership to Class A membership, the Declarant will be entitled to only one vote for each Lot owned by the Declarant. The period of time during which Class B membership is in existence will be referred to in this Declaration as the period of **"Declarant Control"**. For the purposes of Section 3.02(b)(i) above, the number of votes will be based upon the Lots initially covered by this Declaration, plus all Lots that in the future may be included in or covered by this Declaration as provided in this Declaration, minus all Lots withdrawn from this Declaration, if any.

Section 3.03. Transfer of Control. When the period of Declarant Control ends, the Class A Members will accept control of the Association from the Declarant and full responsibility for the operation of the Association and administration of the Property as provided in the Project Documents, and Declarant will have no further responsibility for any future acts or omissions with respect to the operation of the Association and administration of the Property. Any claims of the Association or any Owners against Declarant for acts or omissions of Declarant with respect to the operation of the Association or the administration of the Property (including the availability or sufficiency or any reserves) arising during the period of Declarant Control will be waived, unenforceable, and void if not commenced within one year from the expiration of Declarant Control.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.01. Lien and Personal Obligation for Assessments.

(a) ***Creation of Lien.*** By accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, each Owner of any Lot is

deemed personally to covenant and agree to be bound by all covenants and restrictions of the Project Documents and to pay to the Association: (i) the Annual Assessments described in Section 4.02 below; (ii) the Special Assessments described in Section 4.04 below; (iii) an amount sufficient to, on demand, indemnify and hold harmless the Association for, from, and against all obligations undertaken or incurred by the Association on account of an individual Owner's special request and to repay the Association for all expenditures on account of the special services or benefits requested by an Owner; (iv) an amount sufficient to reimburse the Association for the cost of performing any obligation of an Owner under the Project Documents that the Owner has failed to timely pay or perform; (v) an amount sufficient to, on demand, indemnify and hold harmless the Association for, from, and against all monetary damages or penalties imposed on the Association arising out of the failure of the Association to disclose, or to accurately disclose, the information required under A.R.S. § 33-1806 where the Owner knew or should have known of the inaccuracy of the information or where the Owner was under a contractual or other duty to disclose the information not provided (or not accurately provided) by the Association; and (vi) all other assessments or other similar charges that may be fixed, established, and collected from time to time as provided in this Declaration or the other Project Documents. The amounts described above, together with all accrued interest, court costs, attorney fees, late fees, penalties, fines, and all other expenses incurred in connection with the collection of the amounts described above, whether or not a lawsuit or other legal action is initiated, are referred to collectively in the Project Documents as an "**Assessment**" (whether capitalized or not). The Association, by the recordation of this Declaration, is granted a perfected, consensual, and continuing lien upon the Lot against which the assessment is made or has been incurred for the payment of all assessments, and the further recordation of any claim of lien or notice of lien is not required for perfection or enforcement of the Association's lien for the assessments.

(b) ***Personal Obligation.*** Each assessment also will be the personal, joint, and several obligation of each person who was the Owner of the Lot at the time when the assessment became due, was incurred, or arose, as applicable. The personal obligation for delinquent assessments will not pass to the particular Owner's successors in title unless expressly assumed in writing by the Owner's successors; however, the personal obligation of the prior Owner for the delinquent assessments will not be deemed released or discharged by reason of any assignment, conveyance, or transfer of title of a Lot. The Association may enforce the personal obligation of an Owner to pay delinquent assessments in any manner permitted under Arizona law or the Project Documents. Notwithstanding the previous sentences in this subsection, if there is an assignment, conveyance, or transfer of title to any Lot, all assessments applicable to the transferred Lot will continue as a lien against the Lot in the hands of the subsequent Owner, except in those circumstances described in Section 4.09 below.

Section 4.02. Purpose of Annual Assessments. The term "**Annual Assessments**" (whether capitalized or not) means those assessments levied by the Association for the purpose of: (i) promoting the recreation, health, safety, welfare, and desirability of the Project for its Owners; (ii) operating the Common Area or any other areas over which the Association has maintenance responsibility, such as the Areas of Association Responsibility (including payment of any taxes, utilities, and rubbish collection fees if not individually billed to the Owners); (iii) insuring, maintaining, repairing, painting, and replacing improvements in the Common Area or Areas of Association Responsibility; and (iv) enhancing and protecting the value, desirability, and attractiveness of the Project generally. The annual assessment may include a reserve fund for taxes, insurance, insurance deductibles, maintenance, repairs, painting, and replacements of the Common Area and other areas that the Association is responsible for maintaining including the Areas of Association Responsibility.

Section 4.03. Initial and Annual Assessments. Prior to the conveyance of the first Lot by Declarant to a third party purchaser, the Association will establish an annual assessment that will remain in effect through the "**base year**" ending December 31, 2003. After the base year, the maximum annual

assessment will be as determined by the Board of Directors, subject to the limitations below. The annual assessment may not be increased over the annual assessment in the previous year by more than the Permitted Percentage Increase (as defined below), unless the additional increase is approved at a duly called regular or special meeting by an affirmative vote (in person or by proxy) of two-thirds (2/3) or more of the total number of eligible votes cast at that meeting in each class of Members. From and after the base year, the Board, without a vote of the Members, may increase the maximum annual assessments during each fiscal year of the Association by an amount ("**Permitted Percentage Increase**") equal to the greater of: (i) 10%; or (ii) a percentage calculated by dividing the Consumer Price Index in the most recent October (identified by an A in the formula below) by the Consumer Price Index for the October one year prior (identified by a B in the formula below), minus one (i.e., CPI percentage = (A/B) -1). By way of example only, the percentage increase in the assessment for the assessment year 2003 cannot be increased by more than the greater of: (I) 10%; or (II) the increase in the Consumer Price Index for October, 2002, divided by the Consumer Price Index in October, 2001), minus one. The term "**Consumer Price Index**" will refer to the United States Bureau of Labor Statistics, Consumer Price Index, United States and selected areas, all items issued by the U.S. Bureau of Labor Statistics, or its equivalent, revised, or successor index. Notwithstanding the previous portions of this Section 4.03, if the Permitted Percentage Increase exceeds 20% or if, regardless of the Permitted Percentage Increase, the annual assessment is otherwise sought to be increased by more than 20% over the annual assessment in the previous year, the increase in the annual assessment must be approved by greater than 50% of the total number of eligible votes of the Members, regardless of class, and these approvals may be obtained at a regular or annual meeting of the Members or by written ballot of the Members.

Section 4.04. Special and Other Assessments.

(a) ***Special Assessments.*** The Association, at any time and from time to time in any assessment year and in addition to the annual assessments authorized above or any other assessments authorized elsewhere in this Declaration, may levy a special assessment against all of the Members for the purpose of defraying, in whole or in part: (i) the cost of any construction, repair, or replacement of the Common Area or the Areas of Association Responsibility, regardless of the cause for the construction, repair, or replacement; or (ii) the cost of any other unexpected or extraordinary expenses incurred in connection with the maintenance of the Common Area or the Areas of Association Responsibility or any other Association matters. The foregoing assessments will be referred to as "**Special Assessments**" (whether capitalized or not). All special assessments, however, must be approved at a duly called regular or special meeting of the Members by an affirmative vote (in person or by proxy) of two thirds (2/3) or more of the total number of eligible votes cast at that meeting for each class of Members.

(b) ***Other Assessments.*** In addition to the annual and special assessments described above, the Board, without a vote of the Members, may levy other assessments (collectively called the "**Other Assessments**", whether the term is capitalized or not) against individual Owners arising out of: (i) the Owner's failure to comply with the Project Documents; (ii) any negligent, grossly negligent, or intentional act or omission of the Owner or the Owner's Permittees resulting in injury to any other Owner or any other person within the Project or damage to any other Lot, Common Area, or other areas of Association responsibility including the Areas of Association Responsibility; or (iii) those indemnification, reimbursement or payment obligations described in the Declaration. Assessments made for any of the matters described in the previous sentence will not be considered a monetary penalty against the Owner and will not be subject to the limitations contained in Sections 4.03 or 4.04(a) above.

Section 4.05. Notice and Quorum. Written notice of any regular or special meeting called for the purpose of taking any action for which a meeting is required under Sections 4.03 or 4.04 above will be sent to all Members not less than 10 days nor more than 50 days in advance of the meeting. At the first meeting called regarding any given action, the presence (at the beginning of the meeting) of Members in

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person or by proxy entitled to cast 25% or more of the total number of eligible votes of the Association, regardless of class of membership, will constitute a quorum. If the required quorum is not present, one other meeting for the same purpose may be called subject to the same notice requirement, and the presence (at the beginning of the meeting) of Members in person or by proxy entitled to cast 10% or more of all the total number of eligible votes of the Association, regardless of class of membership, will constitute a quorum. No subsequent meeting will be held more than 60 days following the preceding meeting. The notice and quorum requirements outlined above apply only to meetings called under Sections 4.03 or 4.04(a) of the Declaration.

Section 4.06. Uniform Rate of Assessment. Both the annual assessments outlined in Section 4.03 and the special assessments outlined in Section 4.04(a) above must be fixed at a uniform rate for all assessable Lots. Annual assessments may be collected in installments throughout the year as the Board of Directors may determine. The provisions of this Section 4.06 do not preclude the Board from making other assessments of the type described in Section 4.04(b) above against an Owner or multiple Owners on a non-uniform basis based on the services or benefits provided, the reimbursements required, or the repairs or maintenance performed for which the other assessments are imposed.

Section 4.07. Commencement and Verification of Assessments.

(a) ***Commencement and Collection.*** The annual assessments established in this Declaration will commence on the first day of the month following the conveyance of the first Lot by Declarant to a third party purchaser. The first annual assessment will be adjusted according to the number of months remaining in the calendar year. After determination of the annual assessment during the base year, the Board of Directors will endeavor to fix the amount of each subsequent annual assessment against the Lot at least 30 days in advance of each annual assessment period; however, the annual assessment will be binding notwithstanding any delay and all amounts due for annual assessments in any calendar year may be collected retroactively for that calendar year upon their determination or approval under the Project Documents. Written notice of the annual assessment and any special assessments must be sent to every Owner subject to the assessment. The due dates for assessments will be established by the Board of Directors. Assessments will be payable in the full amount specified by the assessment notice, and no offsets against this amount will be permitted for any reason whatsoever including, without limitation, abandonment of the Owner's Lot, a claim that the Association is not properly exercising its duties in maintenance or enforcement, a claim against the Declarant or its affiliates, or the non-use or claim of non-use by Owner of all or any portion of the Common Area. Assessments may be collected in advance or in arrears as the Board of Directors will determine in their sole discretion.

(b) ***Verification of Assessments.*** The Association, acting through the Board of Directors, upon written demand and for a reasonable charge determined by the Board, will furnish to any lienholder, Owner, or authorized representative or designee of an Owner a certificate signed by an officer of the Association setting forth the amount of any unpaid assessments on a specified Lot, all within the time periods (if any) required under A.R.S. § 33-1807.I. A properly executed certificate of the Association as to the status of assessments on a Lot will be binding on the Association as of the date of issuance of the certificate and for the time period specified in the certificate. The Board is authorized to prescribe specific rules regarding these requests for certificates including rules regulating the frequency of the requests and the charge for furnishing the recordable certificates.

Section 4.08. Effect of Nonpayment of Assessments - Remedies of the Association.

(a) ***Late Charge.*** Any installment of any annual, special, or other assessment that is not paid within 15 days after the due date will be subject to a late charge equal to the greater of $15 or 10% of the unpaid assessment and, additionally, will bear interest from the due date at the

minimum rate of 12% per annum, compounded monthly, or any other legal interest rate approved by the Board of Directors and permitted under the requirements of any applicable Institutional Guarantor.

(b) ***Monetary Penalties.*** The Board, after satisfaction of the notice and hearing requirements contained in the Bylaws, may impose monetary penalties in a reasonable amount against an Owner for any non-monetary violations of the Project Documents.

(c) ***Protective Advances.*** If an Owner fails to make payments under any Mortgage affecting a Lot or fails to pay taxes, governmental assessments, or any other payments due with respect to the Owner's Lot, the Association may make, but is not obligated to make, payments of the amounts due under any Mortgage or may make the required payments for taxes, governmental assessments, or other payments on the Lot, and all advances made by the Association to cover the required payments will be due and payable immediately from the Owner as an assessment of the Association secured by the Association's lien for assessments.

(d) ***Collection and Lien Actions.*** Each Owner of a Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, specifically vests in the Association and its agents the right and power to bring all actions against the Owner personally for the collection of all assessments due under the Project Documents as a debt to the Association and to enforce the lien securing the assessment by all methods available for the enforcement or foreclosure of liens under the Project Documents or Arizona law. To the extent permitted by law, each Owner grants to the Association a private power of sale in connection with the lien. The Association may bid in any foreclosure, sheriff's sale, or similar sale (whether or not the foreclosure was initiated by the Association or some other person) and to acquire, hold, lease, mortgage, and convey the Lot purchased. The Association may institute suit to recover a money judgment for unpaid assessments of the Owner without being required to foreclose its lien on the Lot and without waiving the lien that secures the unpaid assessments. Any foreclosure action of the Association may be instituted without regard to the value of the Lot, the solvency of the Owner, or the relative size of the Owner's default. The Association's assessment lien and its rights of enforcement under this Declaration are in addition to, and not in substitution of, all other rights and remedies that the Association may be entitled to exercise under the other Project Documents or Arizona law.

(e) ***Application of Payments.*** Any amounts received by the Association from a delinquent Owner will be applied to the delinquent amounts in the manner required under A.R.S. § 33-1803.A.

Section 4.09. Subordination of Association Lien. Except as established under A.R.S. § 33-1807.C. and regardless of whether or not a Notice and Claim of Lien has been recorded by the Association, the Association's lien for the assessments established in this Declaration is superior to all liens, charges, homestead exemptions, and encumbrances that are imposed on or recorded against any Lot after the date of recordation of this Declaration. The Association's lien for the assessments established in this Declaration, however, will be automatically subordinate to: (i) the lien of any First Mortgagee holding a First Mortgage, except for assessments that accrue from and after the date upon which the First Mortgagee acquires title to or comes in possession of any Lot and except for amounts due to the Association as described in Section 5.06 below; and (ii) any liens for real estate taxes or other governmental assessments or charges that by law are prior and superior to the Association's lien for the assessments. The assignment, conveyance, or transfer of title to any Lot will not limit or extinguish the Association's lien for assessments or the personal obligation of the Owner to pay all assessments arising during the Owner's ownership of the Lot; however, the assignment, conveyance, or transfer of title to any Lot pursuant to a judicial foreclosure or trustee's sale of a First Mortgage will extinguish the assessments on the Lot that became due prior to the judicial foreclosure or trustee's sale by the First Mortgagee. The

assignment, conveyance, or transfer pursuant to a judicial foreclosure or trustee's sale by any First Mortgagee, however, will not relieve any foreclosed Owner from personal liability for the payment of assessments arising during the Owner's ownership of the Lot and will not release or extinguish the lien for any assessments that may become due or arise after the judicial foreclosure or trustee's sale or the lien for any other assessment created under Section 5.06 below.

Section 4.10. Notice of Lien. Without affecting the priority and perfection of any assessment that has been perfected as of the date of recordation of this Declaration, the Association may give (but is not obligated to give) notice to any Owner whose assessment is due and unpaid by mailing to the Owner a copy of a "**Notice and Claim of Lien**" which may state, among other things, the following: (i) the last known name of the delinquent Owner; (ii) the legal description or street address of the Lot against which the claim of lien is made; (iii) the amount claimed to be due and owing from the Owner and assessed against the Lot; and (iv) a statement that the claim is made by the Association pursuant to the terms of the Declaration and the other Project Documents. Each default in the payment of any assessment will constitute a separate basis for a claim of lien, but any number of defaults may be included within a single Notice and Claim of Lien. The Association may record a Notice and Claim of Lien against the delinquent Owner's Lot. The Notice and Claim of Lien may be executed by any officer of the Association, the managing agent for the Association, or legal counsel for the Association, but in all events the lien will remain that of the Association.

Section 4.11. Initial Working Capital. To provide the Association with funds for initial capital reserves and extraordinary or unexpected expenses, each purchaser of a Lot from the Declarant will pay to the Association, immediately upon becoming the Owner of a Lot, an amount equal to one-sixth (1/6) of the Association's annual assessment for the then current fiscal year of the Association. These working capital payments will be collected only upon the original sale of the Lot by the Declarant and will not be collected on subsequent resales. All working capital payments to the Association will be deposited in the Association's reserve account or separately accounted for in the Association's operating account as a reserve fund, and all working capital reserve funds will be used only as directed by the Board of Directors, as they may see fit in their sole discretion. During the period of Declarant Control, neither the Association nor the Declarant will use any of the working capital funds to defray the Declarant's expenses or construction costs or to pay for ordinary expenses of the Association. Declarant, in its sole discretion, may advance certain amounts to the Association as working capital; however, Declarant will not be obligated to advance any amounts for working capital. If Declarant elects to advance any amounts for working capital, Declarant will be entitled to a reimbursement from the Association, upon Declarant's demand, for all working capital funds previously advanced by Declarant. Except for those amounts paid by Declarant, all amounts paid as working capital will be non-refundable and will not act as a credit against any assessment payable by an Owner pursuant to this Declaration.

ARTICLE V

COMMON AREA AND LOT USE AND MAINTENANCE

Section 5.01. Common Area. Except as provided in Section 5.02 below and subject to the City's maintenance of the water and sewer facilities located with the Common Area, the Association will be responsible for the maintenance, repair, and replacement of the Common Area and the Areas of Association Responsibility, and, without any approval of the Owners, the Association may: (i) reconstruct, repair, replace, and refinish any landscaping or improvement located on or used in connection with the Common Area or any Areas of Association Responsibility; and (ii) do any other acts deemed necessary to preserve, beautify, and protect the Common Area or any Areas of Association Responsibility in accordance with the general purposes specified in the Project Documents. The Board of Directors will be the sole and absolute judge as to the appropriate maintenance of the Common Area and the Areas of Association Responsibility. The Association will have no obligation to perform any maintenance or repair work that is performed by the City or any provider utility company that is

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responsible for the maintenance of any utilities or municipal improvements located within the Project. No Owner will alter, remove, injure, or interfere in any way with any landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like, if any, placed on the Common Area or any Areas of Association Responsibility without the express written consent of the Declarant, during the period of Declarant Control, or the Architectural Committee, after the period of Declarant Control.

Section 5.02. Repairs Necessitated by Owner. If the need for maintenance or repair to any Common Area or any Areas of Association Responsibility is caused through the acts or omissions (including negligent acts or omissions) of an Owner, the Owner's Permittees, or any pet of the Owner, the Association, in its discretion, may add the cost of the maintenance or repairs, including the deductible portion of any applicable insurance policy, to the assessment against the Lot owned by that Owner, without regard to the availability of any insurance proceeds payable to the Association for the cost of the maintenance or repairs. In addition to the foregoing, if the Owner of a given Lot is held liable to the Association for maintenance or repair work performed by the Association to any other Lot (i.e., a Lot not owned by that Owner), the amount of that judgment will be added to and become a part of the assessment against the Lot owned by that Owner.

Section 5.03. Maintenance of Detached Dwelling Unit. The Detached Dwelling Unit and all other permitted Ancillary Units must be maintained by the Owner of the applicable Lot in a clean, safe, neat, and attractive condition and repair and must be adequately painted and finished. Without limiting the foregoing, the Owner of each Lot will be responsible for: (i) all conduits, ducts, plumbing, wiring, and other facilities and utility services that are contained on the Lot; (ii) all service equipment, such as refrigerators, air conditioners, heaters, dishwashers, washers, dryers, ovens, and stoves; and (iii) all floor coverings, roofs, windows, doors, paint (internal and external), finishes, siding, and electrical and plumbing fixtures.

Section 5.04. Access at Reasonable Hours. For the purpose of performing the maintenance, repairs, or replacements permitted under this Article V, the Association and the Association's agents or employees will have the right, after reasonable notice to an Owner (except in the case of emergency, in which case no notice need be given), to enter onto the Owner's Lot at any reasonable time. For the purposes of performing the maintenance authorized by Section 5.01 above upon any portion of the Common Area, the Association and the Association's agents or employees may enter onto the Common Area without notice to any Owner at reasonable hours.

Section 5.05. Landscaping. Unless completed by Declarant as part of the Owner's purchase contract for the Lot and Detached Dwelling Unit, the Public Yard of a Lot, other than Areas of Association Responsibility, must be landscaped by the Owner of the Lot within 120 days of becoming an Owner. The foregoing timing requirement will not apply to the Declarant or any Lots owned by the Declarant as model units. Plans for all landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, decorative features (such as fountains, water features, flag poles, planters, bird baths, sculptures, and walkways), and the like (collectively, the "**landscaping**") that are to be installed in the Public Yard must be approved prior to installation by the Architectural Committee under Article VII of this Declaration. The Lot and all landscaping located on the Lot or in the right-of-way abutting the Lot must be maintained at all times in clean, safe, neat, and attractive condition and repair solely by the Owner of the Lot, and the Owner will be solely responsible for neatly trimming and properly cultivating the landscaping located anywhere on the Lot or in the right-of-way abutting the Lot and for the removal of all yard clippings, trash, weeds, leaves, and other unsightly material located on the Lot or in the right-of-way abutting the Lot. The Architectural Committee shall maintain a list of permitted landscaping materials.

Section 5.06. Owner's Failure to Maintain. If an Owner fails to perform any maintenance and repair required under the terms of this Article V, then, upon the vote of a majority of the Board of Directors and after not less than 30 days prior written notice to that Owner, the Association will have the right (but not the obligation) to enter upon or into that Lot and to provide the required maintenance or

make the required repairs. Any entry by the Association or its agents will not be considered a trespass. The cost of these maintenance items and repairs will be an assessment against the applicable Lot and the Owner, will be paid promptly to the Association by that Owner, and will constitute a lien upon that Owner's Lot. The self-help rights of the Association described above are in addition to any other remedies available to the Association under the Project Documents or Arizona law. Without limiting the rights of the Association described above, if, concurrent with delivery of the 30 day written default notice to Owner for failure of the Owner to perform its obligations under this Article V, the Association delivers a similar written notice to the holders of all Mortgages on the defaulting Owner's Lot, the lien in favor of the Association will constitute a lien for other assessments of the Association under A.R.S. § 33-1807.C. Upon recordation of a Notice and Claim of Lien specifically referring to this Section 5.06, the assessment made for the cost of the maintenance and repairs performed by the Association will be deemed to have been delinquent as of the date of recordation of this Declaration, and the lien for this other assessment will have priority based on the recordation date of this Declaration.

Section 5.07. Fences and Walls.

(a) ***Construction.*** Except as may be installed by the Declarant, no boundary or enclosure fence or wall, other than the wall of the Detached Dwelling Unit constructed on the Lot, may be constructed on any Lot without the prior approval of the Architectural Committee. For purposes of this Section 5.07, the fences or walls described above will be called a "**Fence**" or "**Fences.**" Notwithstanding the foregoing, any prevailing governmental regulations will take precedence over these restrictions if the governmental regulations are more restrictive. Unless otherwise approved by the Architectural Committee, all Fences and any materials used for Fences dividing, or defining the Lots must be of new masonry block construction and must be erected in a good and workmanlike manner and in a timely manner.

(b) ***Encroachments.*** Declarant will endeavor to construct all Fences upon the dividing line between the Lots. By virtue of accepting a deed for a Lot (whether or not it is expressed in the deed or conveying instrument) or otherwise becoming an Owner, all Owners acknowledge and accept that the Fences installed by Declarant may not be exactly upon the dividing line, but rather may be near or adjacent to the dividing line because of minor encroachments or minor engineering errors or because existing easements or utility lines prevent a Fence from being located on the dividing line. With respect to any Fence not located exactly on a dividing line between Lots but located near or adjacent to the dividing line, an Owner of a Lot will have and is granted a permanent and exclusive easement over any property immediately adjoining the Owner's Lot up to the center line of the Fence for the sole use and enjoyment of that Owner.

(c) ***Maintenance and Repair of Fences.*** All Fences constructed upon or near the dividing line between the Lots will be jointly maintained in good condition by the adjoining Lot Owners and, if damaged or destroyed, repaired at the joint cost and expense of the adjoining Lot Owners. If, however, any dividing line Fence is damaged or destroyed by the act or acts of one of the adjoining Lot Owners or the applicable Owner's Permittees, the Lot Owner that is responsible for the damage will promptly rebuild and repair the Fence to its prior condition, at that Owner's sole cost and expense. If the Lot Owners fail to timely commence and complete any of these repairs or maintenance, the Association may cause the maintenance or repairs to be made at the joint and sole cost and expense of the adjoining Owners or Owner, as applicable. Fences that adjoin Common Area as well as a Lot will be maintained by the Association at the Association's cost and expense unless damage to the Fence is caused by any one or more adjoining Owners or applicable Owner's Permittees (in which case the Association will complete the Fence repairs but at the cost of the responsible Owner). Except for repairs necessitated by the negligent acts or omissions of the Association or any other Owner, all Fences constructed on a Lot that adjoin property that is not subject to this Declaration will be maintained and repaired at the sole cost and

expense of the Owner upon whose Lot (or immediately adjacent to whose Lot) the Fence is installed. Nothing in the prior sentence, however, will be construed as a waiver or limitation of the right of any Owner to be reimbursed for damage or destruction to a Fence arising out of the act or omissions of any adjoining property owner that is not subject to this Declaration.

(d) ***Easement for Repair.*** For the purpose of repairing and maintaining any Fence located upon the dividing line between Lots (or located near or adjacent to the dividing line), a permanent and non-exclusive easement not to exceed five feet in width is created and reserved over the portion of every Lot or Common Area immediately adjacent to any Fence.

(e) ***Fence Design and Color.*** The exterior appearance, color, or finish of the side of any Fence that is visible from any street located within or adjacent to the Property may not be modified from the condition originally constructed by the Declarant unless approved by the Architectural Committee. The design, material, construction, or appearance (including interior and exterior appearance, color, and finish) of any Fence may not be altered or changed without the approval of the adjoining Owners, if any, and the Architectural Committee. Without limiting the preceding portions of this Section 5.07, the interior or exterior side of any Fence may not be painted or stuccoed a color or texture other than what was previously and properly in existence without the prior approval of the Architectural Committee.

Section 5.08. Vehicles

(a) ***Intent Regarding Vehicles.*** The Declarant intends to preserve the residential nature of the Project and to prevent the storage and accumulation of certain numbers or types of vehicles on a Lot in a manner that would detract therefrom. Lots may not be used as junkyards, auto repair facilities (except to the limited extent repairs are permitted in Article VIII below), or as parking lots for operational or non-operational vehicles. To provide guidance to the Owner and the Board and Architectural Committee as to the types of vehicles that may be used and located on Lots within the Project, Declarant establishes the following guidelines.

(b) ***Question of Use.*** Whenever an Owner of the Owner's Occupants have questions regarding the use or parking of certain types of vehicles within the Project, they should consult with the Board or Architectural Committee prior to using or parking of the vehicles within the Project.

(c) ***Permitted Commercial Vehicles.*** Certain types of Commercial Vehicles may be treated as Personal Vehicles and used and parked within the Project as Personal Vehicles if their appearance is similar to that of a Personal Vehicle, as determined by the Architectural Committee. For example, the following types of Commercial Vehicles will automatically be considered Personal Vehicles: (i) commercial pickup trucks with a manufacturer's capacity rating of one ton or less that depict or advertise the name of a business on the vehicle so long as nothing is attached to or located in the bed of the truck other than tool chests or other equipment stored or located below eye level of the pickup bed walls; (ii) commercial pickup trucks with a manufacturer's capacity rating of one ton or less equipped with a camper or camper shell so long as the height of the truck with the camper shell is no more than eight feet in height (when measured from ground level of the vehicle); and (iii) vehicles that are similar to Personal Vehicles but that may have the name of a business or government organization on the vehicle (such as realtor cars or state vehicles). Without limiting the foregoing, the Architectural Committee also may make a determination that certain other types of Commercial Vehicles may be suitable for storage or parking within the Project if the Commercial Vehicles are of a size or type that could be stored or parked on the Owner's Lot in a manner that would not detract from the residential nature of the Project and the immediately surrounding area.

(d) ***Permitted Recreational Vehicles.*** Certain types of Recreational Vehicles also may be stored or parked on a Lot. Specifically, Recreational Vehicles that can be stored or parked in a garage or Side Yard Parking Area so as to not be Visible From Neighboring Property are permitted within the Project. Additionally, certain Recreational Vehicles that cannot be parked within a garage or that, when parked, will be Visible From Neighboring Property may be stored or parked on a Lot in a Side Yard Parking Area so long as the Recreational Vehicle is appropriately Screened From View, all as determined at the sole discretion of the Architectural Committee or Board, as applicable.

(e) ***Side Yard Parking Areas.*** Not all Lots are suitable for Side Yard Parking Areas, and some Lots may not be suitable for Side Yard Parking Areas even though they are similar in size to other Lots with Side Yard Parking Areas because of Lot location, Lot configuration, view orientation, streetscape, and similar aesthetic reasons, in the sole discretion of the Board. Prior to installation of any Side Yard Parking Area on a Lot, the Owner must submit to the Board for approval complete plans and specifications for the width, depth, design, location, composition, and appearance of the Side Yard Parking Area. The approval by the Architectural Committee or the Board of a Side Yard Parking Area should not be construed as the approval to park or store Personal Vehicles, Commercial Vehicles, or Recreational Vehicles in the Side Yard Parking Area, and the types of Personal Vehicles, Commercial Vehicles, and Recreational Vehicles that may be parked or stored in the Side Yard Parking Area are governed by other provisions of the Project Documents.

(f) ***Board Decisions on Vehicles.*** The Architectural Committee and, if the Architectural Committee's decision is appealed, the Board will be the sole judge as to whether any Commercial Vehicle or Recreational Vehicle will be considered a Personal Vehicle for the purposes of this Declaration and the other Project Documents. Not all types of Commercial Vehicles or Recreational Vehicles will be considered Personal Vehicles.

Section 5.09. Reduced Level of Street Lighting. The Project has a reduced level of street lighting. Any future additional street lighting shall be at the expense of the Owner(s) of the abutting Lot(s) and not at the expense of the City or the Association.

Section 5.10. General Standards. Except as may be otherwise provided in this Declaration or the other Project Documents, the Association and each respective Owner of a Lot, as applicable, will maintain the areas they are respectively responsible for at a level of general maintenance at least equal to that prevailing with respect to areas of a similar nature located in residential communities commonly and generally deemed to be of the same quality as the Project.

ARTICLE VI

POWERS OF THE OWNERS' ASSOCIATION

Section 6.01. Duties and Powers. In addition to the powers enumerated in the other Project Documents or elsewhere in the Declaration, the Association, through the sole discretion of the Board of Directors, is vested with the power and authority to:

(a) ***Common Area.*** Maintain, repair, replace, and otherwise manage the Common Area and all other real and personal property that may be acquired by, or come within the control of, the Association (including the Areas of Association Responsibility), including the right to enter into contracts for the design, installation, or construction of capital or other improvements on the Common Area;

(b) ***Legal and Accounting Services.*** Obtain legal, accounting, and other services deemed by the Board, in its discretion, to be necessary or desirable in the operation of the Association;

(c) ***Easements.*** Subject to the limitations, if any, imposed by the Project Documents, grant easements where necessary for utilities, sewer facilities, and CATV on, under, over, through, upon, or across the Common Area to serve the Common Area or any Lot;

(d) ***Employment of Managers.*** Employ affiliated or third-party managers or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association;

(e) ***Purchase Insurance.*** Purchase insurance for the Common Area for risks, with companies, and in amounts as the Board determines to be necessary, desirable, or beneficial, subject to the provisions of Section 6.02 below;

(f) ***Other.*** Perform all other acts that are expressly or impliedly authorized under this Declaration, the other Project Documents, or Arizona law including, without limitation, the right to construct improvements on the Lots, Common Area, and Areas of Association Responsibility, and the power to prepare those statements and certificates required under A.R.S. § 33-1806 and § 33-1807.I.; and

(g) ***Enforcement.*** Enforce the provisions of this Declaration and the other Project Documents by all available and proper means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, and the establishment of a system of fines or penalties for the enforcement of this Declaration and the other Project Documents.

Section 6.02. Insurance.

(a) ***Liability Insurance.*** By no later than the date on which Declarant has first conveyed a Lot to a third party Owner, comprehensive general liability insurance covering the use and operation of the Common Area and the Areas of Association Responsibility (including all private streets described in Section 9.09 below) will be purchased and obtained by the Board for the Association, or acquired by assignment from Declarant. This insurance policy will be maintained in force by the Association at all times during the term of this Declaration. The premiums will be paid out of the Association's funds. The insurance will be carried with reputable companies authorized and qualified to do business in Arizona. The minimum amounts of coverage will be $1,000,000 for bodily injury and property damage on a combined single limit basis. The policy will be purchased on an occurrence basis and will name as insureds the Owners, the Association (its directors, officers, employees, and agents acting in the scope of their employment), and the Declarant (its directors, officers, partners, employees, and agents in the scope of their employment) for so long as Declarant owns any Lot. This policy will include, but need not be limited to, insurance against injury or damage occurring in or on the Common Area.

(b) ***Hazard and Multi-Peril Insurance - Master Policy for Common Area.*** A master or blanket hazard and multi-peril insurance policy will be purchased or obtained by the Board or acquired by assignment from Declarant promptly following the construction of any building or other similar permanent structure on the Common Area. Once purchased, obtained, or acquired, the hazard insurance policy will be maintained in force at all times. The premiums will be paid out of the Association's funds. The hazard insurance policy will be carried with reputable companies authorized and qualified to do business in the State of Arizona and will insure against loss from fire and other hazards covered by the standard extended coverage

endorsement and all risk endorsement to the hazard insurance policy for the full replacement cost of all of the permanent improvements upon the Common Area and the Areas of Association Responsibility. The hazard insurance policy will be in an amount determined from time to time by the Board in its sole discretion. The hazard insurance policy will name the Declarant (for so long as Declarant owns a Lot), Association, and any First Mortgagee of the insured permanent improvements on the Common Area as insureds, as their respective interests may appear.

(c) ***Hazard Insurance - Detached Dwelling Units.*** The Association will not be obligated to obtain property insurance, liability insurance, flood insurance, or any other type of hazard insurance covering the Detached Dwelling Units or the Lots. The procurement and maintenance of these types of insurance on the Detached Dwelling Units and the Lots will be the sole obligation of the Owners of the respective Lot and Detached Dwelling Unit.

(d) ***Other Insurance.*** The Board may purchase (but is not obligated to purchase) additional insurance that the Board determines to be advisable or necessary including, but not limited to, workmen's compensation insurance, boiler explosion insurance, demolition insurance, flood insurance, fidelity bonds, director and officer liability insurance, errors and omissions insurance, and insurance on personal property owned by the Association. All premiums for these types of insurance and bonds will be paid out of the Association's funds. The Association may assess the Owners in advance for the estimated cost of these types of insurance.

(e) ***Owner Insurance.*** By virtue of owning a Lot subject to this Declaration, each Owner covenants to all other Owners and the Association that the Owner will carry all risk casualty insurance on its Detached Dwelling Unit. Without limiting any other provision of the Declaration, it will be each Owner's sole responsibility to provide and maintain: (i) personal liability insurance on the use of the Lot and Detached Dwelling Unit; (ii) theft, fire, multi-peril, and other hazard insurance covering loss or damage to the Owner's personal property and Detached Dwelling Unit; and (iii) any other insurance not carried by the Association that the Owner desires.

(f) ***General Provisions on Insurance.*** The Board of Directors of the Association is granted the authority to negotiate loss settlements with the appropriate insurance carriers covering insurance purchased and obtained by the Association pursuant to Section 6.02. Any two Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and their signatures will be binding on the Association and the Members. Any policy of insurance obtained by the Association may contain a reasonable deductible. The deductible will be paid by the party who would be responsible for the repair in the absence of insurance and, if multiple parties are responsible, the deductible will be allocated in relation to the amount each party's responsibility bears to the total loss, as determined by the Board. The allocation of responsibility by the Board will not limit the right of a Member to enforce any indemnity rights of the Member against any one or more responsible Members or to enforce any right of joint and several liability in a court of law or alternative dispute resolution forum. Where possible, each insurance policy maintained by the Association must require the insurer to notify the Association in writing at least 10 days before the cancellation or any substantial change to the Association's insurance.

(g) ***Non-liability of Association.*** Notwithstanding the requirement of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant (nor its officers, directors, partners, or employees) nor the Association nor any director, officer, or agent of the Association will be liable to any Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of insurance is not adequate, and it will be the responsibility of each Owner to ascertain the coverage and

protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Owner may desire.

(h) ***Provisions Required.*** The comprehensive general liability insurance referred to in Subsection 6.02(a) and, if applicable, the hazard insurance policy referred to in Subsection 6.02(b) will contain the following provisions (to the extent available at a reasonable cost):

(i) Any no other insurance clause will exclude insurance purchased by any Owners or First Mortgagees;

(ii) The coverage afforded by the policies will not be brought into contribution or proration with any insurance that may be purchased by any Owners or First Mortgagees;

(iii) The act or omission of any one or more of the Owners or the Owner's Permittees will not constitute grounds for avoiding liability on the policies and will not be a condition to recovery under the policies;

(iv) A severability of interest endorsement will be obtained that will preclude the insurer from denying the claim based upon negligent acts or omissions of the Association or Owners;

(v) Any policy of property insurance that gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that this election is not exercisable without the prior written consent of the Association;

(vi) Each insurer will waive its rights to subrogate under each policy against the Association (and its directors, officers, agents, and employees) and the Owner (and the Owner's Permittees);

(vii) A standard mortgagee clause will be included and endorsed to provide that any proceeds will be paid to the Association, for the use and benefit of First Mortgagees as their interest may appear, or endorsed to fully protect the interest of First Mortgagees and their successors and assigns; and

(viii) An Agreed Amount and Inflation Guard endorsement will be obtained, when available.

Section 6.03. Damage and Destruction - Reconstruction. If the Common Area or the Areas of Association Responsibility are damaged or destroyed, the Board will obtain bids and contract for repair or reconstruction of these improvements. If the proceeds of any insurance policies payable as a result of the damage or destruction together with the amounts paid by a responsible Owner under Section 5.02 of this Declaration are insufficient to complete the repair or reconstruction, the deficiency will be the subject of a special assessment against all Lots if approved by a vote of the Owners as provided in Section 4.04. If the cost of repairing or reconstructing the improvements in and upon the Common Area or the Areas of Association Responsibility exceeds the available insurance proceeds and the responsible Owner's payment under Section 5.02, and if the Members fail to approve a special assessment to cover the deficiency, the Board will cause any remaining portion of the improvement that is not usable (as determined by the Board in its sole discretion) to be removed and the area cleared and landscaped in a manner consistent with the appearance of the remainder of the Project. If a Detached Dwelling Unit or other permitted Ancillary Unit on any Lot is substantially destroyed by fire or other casualty, the Owner of the Lot will repair or replace the Detached Dwelling Unit but will not be required, unless the Owner

otherwise elects, to repair any damaged Ancillary Unit. If, however, the Owner elects not to repair the damaged Ancillary Unit, the Owner will remove the damaged Ancillary Unit. If the replacement is not commenced and completed within a reasonable period of time by the Owner, the Board may elect to demolish and remove the damaged Detached Dwelling Unit or Ancillary Unit and clean or landscape the applicable portion of the Lot until the Owner elects to repair or replace the Detached Dwelling Unit or Ancillary Unit. The cost of the demolition and other work performed by or at the request of the Association will be added to the assessments charged to the Owner of that Lot and will be promptly paid to the Association by that Owner.

Section 6.04. Other Duties and Powers. The Association, acting through the Board and if required by this Declaration or by law or if deemed necessary or beneficial by the Board for the operation of the Association or enforcement of this Declaration, will obtain, provide, and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or insurance, or pay any taxes or assessments. If, however, any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are specifically provided or apply to particular Lots, the cost will be specially assessed to the Owners of these Lots. The Association may likewise pay any amount necessary to discharge any lien or encumbrance levied against any or all the Lots that, in the sole discretion of the Board, may constitute a lien against the Common Area. If, however, one or more Owners are responsible for the existence of a lien against the Common Area, they will be jointly and severally liable for the cost of discharging the lien, and any costs incurred by the Association by reason of the lien or liens will be specially assessed to the responsible Owners. Without imposing any duty on the Association (unless the Project Documents specifically provide otherwise), the Association may exercise any other right or privilege given to it by the Project Documents and every other right or privilege implied from the existence of the Project Documents.

Section 6.05. Association Rules. By a majority vote of the Board, the Association, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal rules and regulations for the Project. The Association Rules may restrict and govern the use of any area by any Owner or the Owner's Permittees or the Owner's pets and additionally may establish a system of fines and charges for violations of the Project Documents; however, the Association Rules may not discriminate among Owners. A copy of the Association Rules will be available for inspection by the Members at reasonable times. The Association Rules will not be interpreted in a manner inconsistent with this Declaration or the Articles or Bylaws, and, upon adoption, the Association Rules will have the same force and effect as if they were set forth in full and were a part of this Declaration. The Association, the Board, and the officers of the Association will have no liability to any Owner or any other person for the failure to enforce (or any delay in the enforcement of) the Association Rules.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 7.01. Architectural Approval. No Ancillary Unit may be constructed or maintained on a Lot, and no exterior addition, change, or alteration may be made to any Detached Dwelling Unit or approved Ancillary Unit located on a Lot, until all plans and specifications are submitted to and approved in writing by the Architectural Committee. All plans and specifications submitted to the Architectural Committee must specifically identify in writing the item for which approval is sought and must show the nature, type, size, style, color, shape, height, location, materials, floor plan, approximate cost, and other material attributes of the proposed item. All plans and specifications will be reviewed by the Architectural Committee for harmony and compatibility of external design and location in relation to surrounding structures, landscaping, topography, and views from neighboring Lots. Unless a different time period is specified in this Declaration, if the Architectural Committee fails to approve or disapprove the plans and specifications within 30 days after complete and legible copies of the plans and specifications have been submitted to the Association, the application will be deemed approved.

Section 7.02. Appointment of Architectural Committee. The appointment and removal of persons that comprise the Architectural Committee will be governed by the Bylaws.

Section 7.03. Architectural Committee Rules. The Architectural Committee, by unanimous vote or unanimous written consent, may adopt, amend, and repeal rules and regulations or design guidelines regarding the procedures for the Architectural Committee approval and the architectural style, nature, kind, shape, height, materials, exterior colors, surface texture, and location of any improvement on a Lot. These rules and regulations or design guidelines will be called the **"Architectural Committee Rules."** The Architectural Committee Rules will not be interpreted in a manner that is inconsistent with the Declaration, the Articles, the Bylaws, or the Plat, and, upon adoption, the Architectural Committee Rules will have the same force and effect as if they were set forth in full and were part of this Declaration.

Section 7.04. Limited Effect of Approval. All approvals of the Architectural Committee are intended to be in addition to, and not in lieu of, any required municipal or county approvals or permits, and Owner is solely responsible to ensure conformity with municipal and county building codes and building permits, if applicable. The standards and procedures established in the Project Documents for Architectural Committee approval are intended as a mechanism for enhancing the overall aesthetics of the Project and not for the purpose of creating or imposing any duty on the Architectural Committee or any person serving on the Architectural Committee. The approval by the Architectural Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring prior written approval of the Architectural Committee by virtue of this Declaration or any other Project Documents, will not be deemed to constitute an approval of any other matter or a waiver of any requirement or restriction imposed by the City or any law or any requirement or restriction imposed by this Declaration and will not be deemed an approval of the financial condition or integrity of the contractor or the workmanship or quality of the work or the structural integrity, soundness, or sufficiency of the plans, drawings, specifications, or construction. Similarly, the approval of the Architectural Committee to any plans, drawings, or specifications will not be deemed an assurance that the plans, as approved, comply with any applicable drainage requirements for the Lot or Project or that the plans will not result in an adverse impact on drainage for the Lot, other Lots, or the Project. The approval by the Architectural Committee of any plans, drawings, or specifications will only be considered an approval of the specific item in question. For example, the approval by the Architectural Committee of plans for an Ancillary Unit will not be considered as an approval of landscaping that may be shown on the plans for illustration purposes. An Owner's request for approval of an item must be specific in identifying the item that is to be approved.

Section 7.05. Future Approvals. Each Owner acknowledges that the Architectural Committee will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Committee Rules, may vary. In addition, each Owner acknowledges that it may not always be possible to determine unacceptable or objectionable features until the work is completed. In these cases, it may be unfeasible or unreasonable for the Architectural Committee to require changes to the objectionable feature or to cause its removal, but the Architectural Committee may refuse to approve similar proposals in the future. Approval of plans and specifications or other applications by the Architectural Committee will not constitute a waiver of the right of the Architectural Committee to withhold approval to subsequent or additional plans, specifications, and applications of a similar nature.

Section 7.06. Variances. The Architectural Committee may authorize variances from compliance with any of the Architectural Committee Rules or procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require variances. No variance will be granted (or will be deemed to be granted) unless the request for variance is made in writing to the Architectural Committee and is approved in writing by the Architectural Committee. No variance may be issued that is contrary to this Declaration, and the issuance of a variation will not prevent the Architectural Committee from denying a variance in other circumstances. The inability to obtain the

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approval of any governmental agency or to obtain the issuance of a permit on the terms and conditions of any financing will not be considered a hardship warranting a variance.

Section 7.07. Appeals to Board. Decisions of the Architectural Committee may be appealed to the Board (to the extent that the composition of the Board and Architectural Committee is different in any respect) by filing, with the Board, a written notice of appeal within 20 days of the denial of any request made to the Architectural Committee. To the extent that Board has not otherwise established procedures for the handling of appeals from decisions of the Architectural Committee, the Board will treat the appeal as a written request for a hearing under the procedures established in the Bylaws for handling non-monetary violations of the Project Documents.

ARTICLE VIII

USE RESTRICTIONS

In addition to all other covenants and restrictions contained in this Declaration and the other Project Documents, the use of the Common Area, Lots, Detached Dwelling Units, Areas of Association Responsibility, and Ancillary Units by the Owners and the Owner's Permittees is subject to the following use restrictions:

Section 8.01. Restricted Use. Except as otherwise permitted under this Declaration, a Lot will be used only by a Single Family and only for Single Family Residential Use. All construction on any Lot will be restricted to single-family houses and related improvements. In addition, all construction on any Lot must comply with the Site Plan, including without limitation the required natural area open space calculations, and must be approved by the City's design review approval process. No permanent or temporary prefabricated housing, modular housing, or manufactured housing may be placed on a Lot as a Detached Dwelling Unit or an Ancillary Unit. No Commercial or Recreational Vehicle or Family Vehicle may be used within the Project as living or sleeping quarters on a permanent or temporary basis, as approved by the Architectural Committee, and, except for Ancillary Units specifically designed for sleeping or living, no garage or Ancillary Unit may be used as living or sleeping quarters on a permanent or temporary basis.

Section 8.02. Business and Related Uses. No Lot or Detached Dwelling Unit will ever be used, allowed, or authorized to be used in any way, directly or indirectly: (i) as a bed and breakfast or transient lodging facility; (ii) for a business, trade, commercial, manufacturing, industrial, mercantile, commercial storage, vending, or other similar uses or purposes; or (iii) as a daycare, nursery school, or similar child care facility. The previous sentence will not limit the right of the Declarant and its affiliates and agents may use the Property or Lots for any of the foregoing uses as may be required, convenient, or incidental to the construction and sale of Detached Dwelling Units, including, without limitation, a business office, management office, storage area, construction yard, signage, model sites, and display and sales office during the construction and sales period. The foregoing restriction also will not prevent an Owner from conducting his or her personal affairs on the Lot or in the Detached Dwelling Unit and will not be deemed to prevent an Owner and the Owner's Occupants only from the incidental and secondary use of the Detached Dwelling Unit for business or trade purposes that: (i) utilize portions of the Detached Dwelling Unit in such a manner so that the existence or operation of the business activity is not detectable by sight, sound, or smell from outside the Detached Dwelling Unit; (ii) in the Board's judgment, do not generate a level of vehicular or pedestrian traffic or number of vehicles being parked within the Project that is noticeably greater than that which is typical of Lots and Detached Dwelling Units in which no business activity is being conducted; (iii) in the Board's judgment, is consistent with the residential character of the Project and does not constitute a nuisance, or offensive use, or a threat to the security or safety of the residents at the Project; (iv) do not involve door-to-door solicitation of residents within the Project and do not use the street address of the Lot in any off-site signs, advertising, or similar marketing materials; and (v) do not otherwise violate local zoning and use laws applicable to the Project.

Section 8.03. Signs. No emblem, logo, sign, or billboard of any kind will be displayed on any of the Lots or Common Area so as to be Visible From Neighboring Property, except for: (i) signs used by Declarant to advertise the Lots or living units on the Lots for sale or lease; (ii) signs on the Common Area as may be placed and approved by the Declarant, during the period of Declarant Control, or by the Architectural Committee, after the period of Declarant Control; (iii) one sign having a total face area of five square feet or less advertising a Lot and Detached Dwelling Unit for sale or rent placed in the front yard of a Lot, at least 10 feet in back of the adjoining street curb, or in some other location designated by the Architectural Committee; (iv) any security, alarm, or block wall sign located near the front door of the Detached Dwelling Unit; (v) any signs as may be required by legal proceedings; and (vi) signs (including political signs and symbols) as may be approved in advance by the Architectural Committee in terms of number, type, and style. The foregoing will not be deemed to prevent an Owner from displaying religious and holiday signs, symbols, and decorations of the type customarily and typically displayed inside or outside single family residences, subject to the authority of the Board or the Architectural Committee to adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners (including disturbance from pedestrian and vehicle traffic coming on the Project to view the signs, symbols, and decorations). The foregoing also will not be deemed to prevent an Owner from the appropriate display of an American flag through the use of a house or garage mounted bracket or a flagpole approved by the Architectural Committee.

Section 8.04. Restricted Activities. No illegal, noxious, or offensive activity will be engaged in (or permitted to be engaged in) on any Lot. No act or use may be performed on any Lot that is or may become an annoyance or nuisance to the neighborhood generally or other Owners specifically, or that interferes with the use and quiet enjoyment of any of the Owners and of the Owner's Lot. Music and other sounds from outdoor speakers will be played at a level so as to not be a nuisance to neighboring Lot Owners. No Owner will permit any thing or condition to exist upon any Lot that induces, breeds, or harbors infectious plant diseases or infectious or noxious insects.

Section 8.05. Restricted Residences. Except as originally constructed by the Declarant as part of the original construction of the Detached Dwelling Unit and related improvements, no Ancillary Units will be constructed or maintained on any Lot at any time, unless the type, size, shape, height, location, style, and use of the Ancillary Unit, including all plans and specifications and materials for the Ancillary Unit, are approved by the Architectural Committee pursuant to Article VII above prior to the commencement of construction. All Ancillary Units approved by the Architectural Committee for construction on a Lot must be constructed in compliance with all local and municipal codes, ordinances, and stipulations applicable to the Project and all restrictions contained in the Project Documents. Any Ancillary Unit that has been constructed without the prior approval of the Architectural Committee or in violation of any provision of the Project Documents or any local or municipal codes, ordinances, and stipulations is subject to removal upon notice from the Association at the sole loss, cost, and expense of the constructing Owner.

Section 8.06. Roofs and Roof Mounted Equipment. All original and replacement roofs for all Detached Dwelling Units located within the Property must be made of tile, slate, fired clay, concrete, or similar material, unless otherwise approved by the Architectural Committee. Solar energy panels, solar energy devises, swamp coolers, air conditioning units, or other cooling, heating, or ventilating systems may not be installed on the roof of any Detached Dwelling Unit or Ancillary Unit or in any other area of a Lot that is Visible From Neighboring Property, except where originally installed by the Declarant, unless otherwise approved by the Architectural Committee.

Section 8.07. Animals. No animals, livestock, horses, birds, or poultry of any kind will be raised, bred, or kept on or within any Lot or structure on a Lot; however, an Owner may keep a reasonable number of dogs, cats, or other common household pets in the Detached Dwelling Unit or in an enclosed Private Yard if permitted under local zoning ordinances. The Board will be the sole judge as to what constitutes a reasonable number of pets and what constitutes a common household pet. Each Owner

covenants that it will seek the Board's prior approval before bringing pets on the Owner's Lot that may not be considered common household pets. The foregoing restriction will not apply to fish contained in indoor aquariums. These permitted types and numbers of pets will be permitted for only so long as they are not kept, bred, or maintained for any commercial purpose and for only so long as they do not result in an annoyance or nuisance to other Owners. No pets will be permitted to move about unrestrained in any Public Yard of the Owner's Lot or any other Lot, Common Area, Areas of Association Responsibility, or any public or private street within the Project. Each Owner will be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the Owner's Lot or any other Lot, Common Area, Areas of Association Responsibility, or public or private streets. Owners will be liable for all damage caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing, and the Board will be the sole judge for determining whether any pet is an annoyance or nuisance.

Section 8.08. Drilling and Mining. No oil or mineral drilling, refining, quarrying, or similar mining operations of any kind will be permitted upon or in any Lot. No wells, tanks, tunnels, mineral excavations, or shafts will be permitted on or under the surface of any Lot. No derrick or other structure designed for use in boring for water, oil, or natural gas will be erected, maintained, or permitted upon any Lot.

Section 8.09. Trash. All rubbish, trash, and garbage will be regularly removed from their respective Lots, and an Owner will not allow rubbish, trash, or garbage to accumulate on any Lot. If an Owner allows trash to accumulate on the Owner's Lot, the Board, on behalf of the Association, may arrange and contract for the removal and cleanup of the trash, and the costs will become an assessment to that Owner under Section 4.04(b) above. No incinerators will be kept or maintained on any Lot. Refuse containers may be placed on a Lot so as to be Visible From Neighboring Property only on trash collection days and then only for the shortest period of time reasonably necessary for trash collection. Except as permitted in the previous sentence, refuse containers will be stored in an enclosed garage or on another portion of a Lot that is not Visible From Neighboring Property.

Section 8.10. Woodpiles and Storage Areas. Woodpiles, storage areas, and pool filters may be maintained only in the Private Yard of a Lot and only in a manner that is not Visible From Neighboring Property. Covered or uncovered patios may not be used for storage purposes, whether or not the patio or any objects on the patio are Visible From Neighboring Property. Yard tools, lawn mowers, and similar tools and equipment must be stored (when not in use) in the garage of the Lot or in an enclosed storage shed approved as an Ancillary Unit.

Section 8.11. Antennas. Except for the Permitted Satellite Dishes and Exterior Antennas, no external radio antenna, television antenna, or satellite dish may be installed or constructed on any Lot, on the roof of any Detached Dwelling Unit, or on any permitted Ancillary Unit in any manner that will make any portion of the external radio antenna, television antenna, or satellite dish Visible From Neighboring Property. Notwithstanding the preceding sentence, an Owner may install Permitted Satellite Dishes and Exterior Antennas in any location on a Lot, Detached Dwelling Unit, or Ancillary Unit so long as the Owner notifies the Architectural Committee of the location. When permitted by law with respect to Permitted Satellite Dishes and Exterior Antennas, the Architectural Committee may require specific locations, size limitations, or screening devices so long as the restrictions do not impair the installation, maintenance, or use of the Permitted Satellite Dishes and Exterior Antennas, as the term impair is defined under the Telecommunications Act of 1996 and any rules promulgated under the Telecommunications Act of 1996, as either may be amended.

Section 8.12. Windows and Window Covering. Sheets, newspapers, and similar items may not be used as temporary window coverings. No aluminum foil, reflective screens, reflective glass, mirrors, or similar reflective materials of any type will be placed or installed inside or outside of any windows of a Detached Dwelling Unit or Ancillary Unit without the prior written approval of the

Architectural Committee. No awnings, storm shutters, canopies, air conditioners, swamp coolers, or similar items may be placed in, on, or above any window of a Detached Dwelling Unit or Ancillary Unit so as to be Visible From Neighboring Property, unless approved by the Architectural Committee.

Section 8.13. Leasing. Nothing in the Declaration will be deemed to prevent the leasing of a Lot and Detached Dwelling Unit on a non-transient basis to a Single Family from time to time by the Owner of the Lot, subject to all of the provisions of the Project Documents, and the leasing of a Lot and Detached Dwelling Unit in accordance with this Declaration will not be considered the operation of a business or trade. Any Owner who leases a Lot and Detached Dwelling Unit will notify promptly the Association of the existence of the lease and will advise the Association of the terms of the lease and the name of each lessee and occupant.

Section 8.14. Encroachments. No tree, shrub, or planting of any kind on any part of the Property will be allowed to overhang, rest on, or otherwise encroach upon any neighboring Lot, sidewalk, street, pedestrian way, or Common Area in the area below a level of 10 feet.

Section 8.15. Machinery. No machinery of any kind will be placed, operated, repaired, or maintained upon or adjacent to any Lot or Common Area other than machinery that is usual and customary in connection with the use, maintenance, or construction of a Detached Dwelling Unit and machinery that Declarant or the Association may require for the operation and maintenance of the Property.

Section 8.16. Subdivision and Time Shares. Except in those instances where the Declarant is permitted to further subdivide a Lot in the exercise of its general declarant rights, no Lot will be further subdivided or separated into smaller lots or parcels by any Owner, and no portion of a Lot will be conveyed or transferred by any Owner without the prior written approval of the Board. No Owner will transfer, sell, assign, or convey any time-share in any Lot, and any time-share transaction will be void.

Section 8.17. Increased Risk. Nothing will be done or kept by any Owner in or on any Lot, Detached Dwelling Unit, Ancillary Unit, or any other area of the Project that will increase the Association's rate of insurance without the prior written consent of the Board. No Owner will permit anything to be done or kept on or in the Owner's Lot, Detached Dwelling Unit, Ancillary Unit, or any other area of the Project that will result in the cancellation or reduction of insurance on any Detached Dwelling Unit or any insurance of the Association or that would be a violation of any law.

Section 8.18. Drainage Plan. No Ancillary Unit, pool, concrete area, or landscaping will be constructed, installed, placed, or maintained by an Owner on any Lot or any other areas of the Project in any manner that would obstruct, interfere, or change the direction or flow of water as established in the drainage plans for the Project or any Lot that are on file with the City. Except where approved by the Architectural Committee, no dry wells, catch basins, or drainage ponds may be installed on any Lot, and no weep holes or drainage holes may be placed in any boundary fence or wall. No private irrigation wells may be installed anywhere on a Lot.

Section 8.19. Clothes Drying Facilities and Basketball Structures. Outside clotheslines or other outside facilities for drying or airing clothes will not be erected, placed, or maintained on any Lot unless they are erected, placed, or maintained on a Lot in a manner so as to not be Visible From Neighboring Property. Basketball hoops, backboards, and other elevated sport structures of any type may not be attached to or placed on a Detached Dwelling Unit. Basketball hoops, backboards, and other elevated sport structures may be installed and maintained in the Public Yard of a Lot (including in front driveways) so long as the structure is removable or on removable sleeves and so long as the structure is up only during actual use (and is stored when not in actual use so as to minimize the structure being Visible From Neighboring Property). Portable basketball goals also are allowed in the Public Yard (including the front driveways) so long as they are up only when in use and are stored when not in use so

as to minimize the structure being Visible From Neighboring Property. Basketball hoops, backboards, and other elevated sport structures may be erected, placed, and maintained in any Private Yard of any Lot on a permanent basis only after approval by the Architectural Committee.

Section 8.20. Outside Installations. The outdoor burning of trash, debris, wood, or other materials within the Project is prohibited. The foregoing, however, will not be deemed to prohibit the use of normal residential barbecues, private outdoor barbeques, or other similar outside cooking grills. Any residential barbeques, private outdoor fireplaces, or similar outdoor cooking grills (and ancillary facilities) that are Visible From Neighboring Property must be approved by the Architectural Committee prior to installation and use on the Lot. Except as originally installed by the Declarant or as otherwise approved by the Architectural Committee, no spotlights, flood lights, or other high intensity lighting will be placed or utilized upon any Lot so that the light is directed or reflected on any Common Area or any other Lot. Seasonal decorative lights may be displayed between November 15 and January 31, subject to any restrictions adopted by the Board or the Architectural Committee under Section 8.03 above. No outdoor speakers may be installed on a Lot except as originally installed by the Declarant or as otherwise approved by the Architectural Committee. Except as approved by the Architectural Committee as part of the approved landscape plans for a Lot, no artificial vegetation may be installed anywhere on a Lot.

Section 8.21. Fuel Tanks. No fuel tanks of any kind will be erected, placed, or maintained on or under the Property except for propane or similar fuel tanks for pools, gas grills, and similar equipment so long as the fuel tanks are permitted under the ordinances of the City.

Section 8.22. Hazardous Wastes. Except as may be necessary for normal household, landscaping, or automotive uses, no Owner will permit any hazardous wastes (as defined under all applicable federal and state laws), asbestos, asbestos containing material, or any petroleum products or by-products to be kept, dumped, maintained, stored, or used in, on, under, or over any Lot. No gasoline, kerosene, cleaning solvents, or other flammable liquids may be stored in the Common Area.

Section 8.23. Garages and Parking of Family Vehicles. Each Lot will have at least one enclosed garage that will be used by the Owner of the Lot only for the parking of Family Vehicles or Commercial or Recreational Vehicles, storage purposes, household purposes. Garages may not be used as sleeping quarters or guest accommodations, but garages may be used for hobbies such as art, woodworking, golf club repair, and similar hobbies that do not involve the permanent conversion of the garage for these activities The garage door will be maintained by the Owner in good and functioning order and will remain closed except while the garage is in use for cleaning, entry, exit. No garage may be used for storage or any other use that restricts or prevents the garage from being used for parking Family Vehicles or approved Commercial or Recreational Vehicles in a number not less than that contemplated by the garage's initial design (i.e., two vehicles in a 2-car garage). Additional Family Vehicles that cannot be parked in the garage located on the Lot may be parked in the driveway so long as the Family Vehicles are operable and are, in fact, operated from time to time.

Section 8.24. Vehicle Repairs. Routine maintenance and repairs of Family Vehicles or approved Commercial or Recreational Vehicles may be performed within the Owner's garage but not on the driveway located on a Lot, any Side Yard Parking Area, or any other portion of the Owner's Lot or any public or private streets within the Project. Additionally, Family Vehicles and approved Commercial or Recreational Vehicles may be rebuilt, reconstructed, and repaired (including non-routine repairs) within the Owner's garage so long as the Owner's activities are performed at reasonable times and in a reasonable manner and so long as these activities are otherwise not in violation of any local zoning and use laws. During any types of permitted repairs and maintenance as described above (including rebuilding, reconstructing, etc.), the garage door will be kept closed except for entry and exit or ventilation, and then the garage only will remain open to the minimum extent necessary. Except for the purposes of performing the permitted repairs and maintenance of vehicles in the garage as outlined above in this Section, no Family Vehicle or approved Commercial or Recreational Vehicle will be permitted to

be or remain anywhere on any Lot in a state of disrepair or in an inoperable condition. No vehicle frames, bodies, engines, or other vehicle parts or accessories may be stored anywhere on a Lot except in a garage in connection with permitted repairs and maintenance and then only on a temporary basis for anticipated use on any permitted repair or maintenance that is in process. No portion of a Lot (including the garage) may be used to store fuel or lubricants other than for personal use in amounts that are customarily stored by other Owners within the Project. No portion of a Lot (including a garage) may be used for steam cleaning of engines or as a body shop. Owner may perform any of the permitted types of repairs and maintenance, as described above, only on Family Vehicles and approved Commercial or Recreational Vehicles, and not on any similar type of vehicles that are not owned, used, or leased by Owner or Owner's Occupants.

Section 8.25. Declarant's Exemption. Nothing contained in this Declaration will be construed to prevent the Declarant or its agents from constructing, erecting, and maintaining model homes, sales structures, temporary improvements, parking lots, construction trailers, or signs necessary or convenient to the sale or lease of Lots within the Project during the entire period of Declarant's sales and marketing efforts. Also, the use restrictions created in Article VIII of this Declaration will not apply to any construction activities of Declarant.

ARTICLE IX

CREATION OF EASEMENTS

Section 9.01. Public Utilities. Declarant grants and creates a perpetual and non-exclusive easement upon, across, over, and under those portions of the Lots and Common Area depicted and described on the Plat as a public utility easement or P.U.E. for the installation and maintenance of utilities, including electricity, telephone, water, gas, cable television, drainage facilities, sanitary sewer, or other utility lines servicing the Project or any other real property. All public utility easements depicted and described on the Plat may be used by the provider utility company and the City without the necessity of any additional recorded easement instrument. The public utility easements described above will not affect the validity of any other recorded easements affecting the Project. All utilities and utility lines will be placed underground. No provision of this Declaration, however, will act to prohibit the use of aboveground and temporary power or telephone structures incident to the construction of buildings or structures as needed by the Declarant. Public or private sidewalks may be located in the public utility easements. The public utility easements described above will be perpetual unless and until abandoned by resolution of the City.

Section 9.02. Temporary Construction Easements. During the period of Declarant's construction activities within the Project, Declarant reserves a non-exclusive easement for the benefit of itself and its agents, employees, and independent contractors on, over, and under those portions of the Common Area and the Lots that are not owned by the Declarant but that are reasonably necessary to construct improvements on the Common Area or on any adjoining Lots owned by the Declarant. This temporary construction easement will terminate automatically upon Declarant's completion of all construction activities at the Project. This temporary construction easement will not be deemed to affect any portion of a Lot upon which a Detached Dwelling Unit, permitted Ancillary Unit, or pool is located. In utilizing this temporary construction easement, Declarant will not be liable or responsible for any damage to any landscaping or improvements located within the temporary construction easement; however, Declarant will use (and cause its agents, employees, and independent contractors to use) reasonable care to avoid damage to any landscaping or improvements.

Section 9.03. Encroachments. Without limitation of the easement for fence encroachments created under Section 5.07(b) above, each Lot and the Common Area will be subject to a reciprocal and appurtenant easement benefiting and burdening, respectively, the Lot or Common Area for minor encroachments created by construction, settling, and overhangs as originally designed or constructed by

Declarant. This easement will remain in existence for so long as any encroachment of the type described in the proceeding sentence exists and will survive the termination of the Declaration or other Project Documents. This easement is non-exclusive of other validly created easements. This easement for encroachments and maintenance is reserved by Declarant by virtue of the recordation of this Declaration for the benefit of the encroaching Lot and its Owner or the Association, as applicable.

Section 9.04. Easement for Maintenance. If the Association fails to exist or to provide any required maintenance of the Common Area, Declarant grants the City a non-exclusive easement to enter the Project and Common Area to perform all required maintenance to the Common Area, in the City's discretion.

ARTICLE X

GENERAL PROVISIONS

Section 10.01. Enforcement.

(a) ***Rights to Enforce.*** The Association, in the first instance, or any Owner, if the Association fails to act within a reasonable time, will have the right to enforce by any available legal means all covenants and restrictions now or in the future imposed by the provisions of this Declaration or the other Project Documents. Subject to the limitations established in Article XII below with respect to the negotiation, mediation, or arbitration of any disputes, the right to enforce all covenants and restrictions includes the right to bring an action at law, in equity, or both.

(b) ***Failure to Enforce.*** Failure of the Association or any Owner to enforce any covenant and reservation in this Declaration or any of the matters detailed in the other Project Documents will not be deemed a waiver of the right of the Association or any Owner to enforce the covenants and restrictions in the future for the same or similar violation. Failure of the Association or any Owner to enforce any covenant or restriction in this Declaration or any of the matters detailed in the other Project Documents will not subject the Association or any Owner to liability for its actions or inactions. A failure by the Association to disclose or to accurately disclose to any purchaser of a Lot any of the matters required under A.R.S. § 33-1806.A.4., A.5, or A.6 (i.e., violations of the Project Documents, violations of health and building codes, and pending litigation) will not act as a defense to the enforcement of the Project Documents by any Owner for those matters. No act or omission by the Declarant, whether in its capacity as a Member of the Association or as a seller or builder of any Lot, will act as a waiver, offset, or defense to the enforcement of this Declaration by the Association or any Owner.

(c) ***Binding Covenants.*** Deeds of conveyance of all or any part of the Property may incorporate the covenants and restrictions by reference to this Declaration; however, each and every covenant and restriction will be valid and binding upon the respective grantees whether or not any specific or general reference is made to this Declaration in the deed or conveying instrument.

(d) ***Remedies for Violation.*** Without limiting the preceding portions of this Section, violators of any one or more of the covenants and restrictions may be restrained by any court of competent jurisdiction and damages may be awarded against the violators. The remedies established in this Declaration may be exercised jointly, severally, cumulatively, successively, and in any order. A suit to recover a money judgment for unpaid assessments, obtain specific performance, or obtain injunctive relief may be maintained without the extinguishing, waiving, releasing, or satisfying the Association's liens under this Declaration.

(e) ***Limitation on Recovery Against the Association.*** Each Owner of a Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, specifically acknowledges that any award of monetary damages made in favor of the Owner against the Association for the Association's failure to comply with, or accurately comply with, the provisions of A.R.S. § 33-1806 will be satisfied from and limited solely to: (i) the proceeds available under any policy of insurance maintained by the Association for errors or omissions of this type; or (ii) the amount available in any liability reserve account that may be established by the Association and funded through specific liability reserves collected as part of the annual assessments.

Section 10.02. Approval of Litigation.

(a) ***Limits on Initiation of Litigation.*** Except for any legal proceedings initiated or joined by the Association either to: (i) enforce the use restrictions contained in this Declaration through injunctive relief or otherwise; (ii) enforce the Association Rules or the Architectural Committee Rules through injunctive relief or otherwise; (iii) collect any unpaid Assessments, enforce or foreclose any lien in favor of the Association, or determine the priority of any lien for Assessments; (iv) make a claim against a vendor of the Association or supplier of goods and services to the Association; (v) defend claims filed against the Association (and to assert counterclaims or cross-claims in connection with a defense); or (vi) make a claim for a breach of fiduciary duty by any one or more of the Board of Directors or officers of the Association, the Association will not incur any expenses (including, without limitation, attorney fees and costs) to initiate legal proceedings or to join as a plaintiff in legal proceedings without the prior approval of the Members.

(b) ***Member Approval of Association Litigation.*** The Members' approval to initiate legal proceedings or join as a plaintiff in legal proceedings must be given at any duly called regular or special meeting of the Members by an affirmative vote (in person or by proxy) of more than 75% of the total number of eligible votes of the Members, excluding the vote of any Owner who would be a defendant in the proceedings.

(c) ***Prior Approval Disclosures.*** Prior to any vote of the Members, the Association will provide full disclosure of the nature of the claim, the name and professional background of the attorney proposed to be retained by the Association to pursue the matter, a description of the relationship (if any) between the attorney and the Board of Directors (or any member of the Board of Directors) or the property management company, a description of the fee arrangement with the attorney, an estimate of the fees and costs necessary to pursue the claim, and the estimated time necessary to complete the proceedings.

(d) ***Litigation Fund.*** The costs of any legal proceedings initiated or joined by the Association that are not included in the above exceptions (i.e., Section 10.02(a)(i) through (vi) above) must be financed by the Association with monies that are specifically collected for that purpose, and the Association will not borrow money, use reserve funds, use general funds, or use monies collected for other Association obligations (such as working capital requirements) to initiate or join any legal proceeding.

(e) ***Notification to Prospective Purchasers.*** Each Owner must notify all prospective purchasers of the Owner's Lot of all legal proceedings initiated or joined by the Association for which a special litigation fund has been established and must provide all prospective purchasers with a copy of any written notice received by the Owner from the Association regarding the litigation.

(f) ***Exceptions for Certain Board Actions.*** These limitations on the commencement of litigation do not preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to, among other things: (I) enforce the Project Documents including the imposition of fines; (II) comply with the Project Documents or any statutes or regulations related to the operation of the Association, Common Area, or the Areas of Association Responsibility; (III) amend the Project Documents in a manner and for the purposes described in this Declaration; (IV) grant easements or convey Common Area in a manner and for purposes described in this Declaration; or (V) perform the obligations of the Association as provided in this Declaration.

(g) ***Legal Proceedings.*** As used in this Section 10.02, the term "legal proceedings" includes administration, arbitration, and judicial actions including any matters covered by the alternative dispute resolution procedures described in Article XII below.

Section 10.03. General Provisions on Condemnation. If an entire Lot is acquired by eminent domain or if part of a Lot is taken by eminent domain leaving the Owner with a remnant that may not be used practically for the purposes permitted by this Declaration (both instances being collectively referred to as a **"condemnation"** of the entire Lot), the award will compensate the Owner for the Owner's entire Lot and the Owner's interest in the Common Area, whether or not any Common Area interest is acquired by the condemning party. Upon the condemnation of an entire Lot, unless the condemnation decree provides otherwise, the affected Lot's entire Common Area interest, vote, and membership in the Association, and all common expense liabilities, will be automatically reallocated to the remaining Lots in the Project in proportion to the respective interests, votes, and liabilities of those Lots prior to the condemnation, and the Association will promptly prepare, execute, and record an amendment to the Declaration reflecting these reallocations. For purposes of this Section, each Owner, by acceptance of a deed for a Lot or any interest in a Lot, will be deemed to have appointed the Association, acting by and through the Board, as the Owner's attorney-in-fact for the purposes of executing and recording the above-described amendment to the Declaration. Any remnant of a Lot remaining after a condemnation of the type described above will be deemed a part of the Common Area.

Section 10.04. Partial Condemnation of Lot. If only a portion of a Lot is taken by eminent domain and the remnant is capable of practical use for the purposes permitted by this Declaration, the award will compensate the Owner for the reduction in value and its interest in the Common Area. Upon a partial taking, the Lot's interest in the Common Area, votes, and membership in the Association, and all common expense liabilities, will remain the same as that which existed before the taking, and the condemning party will have no interest in the Common Area, votes, or membership in the Association, or liability for the common expenses.

Section 10.05. Condemnation of Common Area. If a portion of the Common Area is taken by eminent domain, the award will be paid to the Association and the Association will cause the award to be utilized for the purpose of repairing and restoring the Common Area, including, if the Board deems it necessary or desirable, the replacement of any common improvements. Any portion of the award not used for any restoration or repair of the Common Area will be divided among the Owners and First Mortgagees in proportion to their respective interests in the Common Area prior to the taking, as their respective interests may appear.

Section 10.06. Severability. Invalidation of any one or any portion of these covenants and restrictions by judgment or court order will not affect the validity of any other provisions of the Project Documents, and these other provisions of the Project Documents will remain in full force and effect.

Section 10.07. Term. The covenants and restrictions of this Declaration will run with and bind the land for a term of 20 years from the date this Declaration is recorded, after which time they will be automatically extended for successive periods of 10 years for so long as the Lots continue to be used for

Single Family Residential Uses or unless terminated at the end of the initial or any extended term by an affirmative vote (in person or by proxy) of the Owners of 90% of the total eligible votes in the Association.

Section 10.08. Amendment. This Declaration and the Plat may be amended as provided in this Declaration. During the first 20-year term of this Declaration and except as otherwise provided in Section 10.12, amendments will be made only by a recorded instrument executed on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association. All amendments will be deemed adopted only if approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of 75% or more of the total number of eligible votes in the Association. After the initial 20-year period, amendments will be made by a recorded instrument approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of two-thirds (2/3) or more of the total number of eligible votes in the Association, and the amendment will be executed on behalf of the Association by an officer of the Association designated for the purpose or, in the absence of designation, by the President of the Association. Subject to any limitation described in Section 10.12 below, Declarant unilaterally may amend this Declaration or Plat or the other Project Documents prior to the recordation of the first deed for any Lot within the Project to an Owner other than Declarant or the recordation of a contract to sell a Lot to an Owner other than Declarant. In addition to and notwithstanding the foregoing, any amendment to the uniform rate of assessments established under Section 4.06 above will require the prior written approval of two-thirds (2/3) or more of the holders of First Mortgages on the Lots.

Section 10.09. Government Financing. If the financing of any Institutional Guarantor is applicable to the Property, any amendment to the Declaration made by the Declarant pursuant to Section 10.08 and any Annexation Amendment made by the Declarant will contain either: (i) the approval of the Institutional Guarantor; or (ii) an affidavit or certification that the Institutional Guarantor's approval has been requested in writing but that the Institutional Guarantor has not either approved or disapproved the amendment or annexation within 30 days of Declarant's request.

Section 10.10. Construction. This Declaration will be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a subdivision consisting of Detached Dwelling Units for Single Family Residential Use and Common Area with maintenance as provided in this Declaration and the other Project Documents. The provisions of this Declaration will be construed in a manner that will effectuate the inclusion of additional lots pursuant to Article XI. Section and Article headings have been inserted for convenience only and will not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration (including any defined terms), regardless of the number and gender in which they are used, will be deemed and construed to include any other number and any other gender as the context or sense of this Declaration may require, with the same effect as if the number and words had been fully and properly written in the required number and gender. Whenever the words and symbol **"and/or"** are used in this Declaration, it is intended, if consistent with the context, that this Declaration be interpreted and the sentence, phrase, or other part be construed in both its conjunctive and disjunctive sense, and as having been written twice, once with the word and inserted, and once with the word or inserted, in the place of words and symbol **"and/or"**. Any reference to this Declaration will automatically be deemed to include all amendments to this Declaration.

Section 10.11. Notices. Unless an alternative method for notification or the delivery of notices is otherwise expressly provided in the Project Documents, any notice that is permitted or required under the Project Documents must be delivered either personally, by mail, or by express delivery service. If delivery is made by mail, it will be deemed to have been delivered and received two business days after a copy of the notice has been deposited in the United States mail, postage prepaid and properly addressed. If delivery is made by express delivery service, it will be deemed to have been delivered and received on the next business day after a copy of the notice has been deposited with an overnight or same-day delivery

service, properly addressed. If an Owner fails to provide the Association with an address for purposes of receiving notices, the address of any Detached Dwelling Unit owned by the Owner will be used in giving the notice. For purpose of notice for the Association or the Board, notice must be sent to the principal office of the Association, as specified in the Articles, and the statutory agent for the Association. The place for delivery of any notice to an Owner or the Association may be changed from time to time by written notice specifying the new notice address.

Section 10.12. General Declarant Rights. Declarant specifically reserves the right to construct improvements on the Lots and Common Area that are consistent with this Declaration or the Plat and to change the unit mix of the Lots described in the Declaration or the Plat, without the vote of any Members. During any period of Declarant Control, Declarant reserves the right to: (i) amend the Declaration or Plat without the vote of any Members to comply with applicable law or correct any error or inconsistency in the Declaration, so long as the amendment does not materially and adversely affect the rights of any Owner; (ii) amend the Declaration to conform with any rules or guidelines of any Institutional Guarantor; or (iii) without the vote of any Members (but with the consent of the Institutional Guarantor, if applicable), withdraw the Property or portions of the Property from this Declaration and subdivide Lots, convert Lots into Common Area, and convert Common Area into Lots.

Section 10.13. Management Agreements. Any management agreement entered into by the Association or Declarant may be made with an affiliate of Declarant or a third-party manager and, in any event, will be terminable by the Association with or without cause and without penalty upon 30 days written notice. The term of any management agreement entered into by the Association or Declarant may not exceed one year and may be renewable only by affirmative agreement of the parties for successive periods of one year or less. Any property manager for the Project or the Association will be deemed to have accepted these limitations, and no contrary provision of any management agreement will be enforceable.

Section 10.14. No Partition. There will be no partition of any Lot, nor will Declarant or any Owner or other person acquiring any interest in any Lot, or any part of the Lot, seek any partition.

Section 10.15. Declarant's Right to Use Similar Name. The Association irrevocably consents to the use by any other profit or nonprofit corporation that may be formed or incorporated by Declarant of a corporate name that is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of the other corporation to make the name of the Association distinguishable from the name of the other corporation. Within five days after being requested to do so by the Declarant, the Association will sign all letters, documents, or other writings as may be required by the Arizona Corporation Commission (or any other governmental entity) in order for any other corporation formed or incorporated by the Declarant to use a corporate name that is the same or deceptively similar to the name of the Association.

Section 10.16. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by the Declaration and the other Project Documents will be joint and several.

Section 10.17. Construction. If there are any discrepancies, inconsistencies, or conflicts between the provisions of this Declaration and the other Project Documents, the provisions of this Declaration will prevail in all instances.

Section 10.18. Survival of Liability. The termination of membership in the Association will not relieve or release any former Member from any liability or obligation incurred under or in any way connected with the Association during the period of membership or impair any rights or remedies that the Association may have against the former Member arising out of or in any way connected with the membership and the covenants and obligations incident to the membership.

Section 10.19. Waiver and Approvals. The waiver of or failure to enforce any breach or violation of the Project Documents will not be deemed a waiver or abandonment of any provision of the Project Documents or a waiver of the right to enforce any subsequent breach or violation of the Project Documents. The foregoing will apply regardless of whether any person affected by the Project Documents (or having the right to enforce the Project Documents) has or had knowledge of the breach or violation. Whenever the approval or consent of the Declarant, Association, Board, or Architectural Committee is required under the Project Documents, the approval or consent may be given or withheld in the sole discretion of the approving party, unless the Project Documents otherwise specify a different standard for approval.

Section 10.20. Attorney Fees. Without limiting the power and authority of the Association to incur (and assess an Owner for) attorney fees as part of the creation or enforcement of any assessment, if an action is instituted to enforce any of the provisions contained in the Project Documents, the party prevailing in any action will be entitled to recover from the other party all reasonable attorneys' fees and court costs. If the Association is the prevailing party in the action, the amount of attorney fees and court costs may be deemed all or part of a special assessment against the Lot and Owner involved in the action.

Section 10.21. Access Control. Each Owner understands and agrees that neither the Association, Declarant, nor their respective shareholders, officers, members, partners, directors, employees, and agents are responsible for the acts or omissions of any third parties or of any other Owner or the Owner's Permittees resulting in property damage, bodily injury, personal injury, or marketability. Any access control systems or security measures or devices (including gated entries, security guards, gates, private security alarms, block watch, or courtesy patrol) that may be used at the Project will commence and be maintained by the Association solely through a Majority vote of the Board, and each Owner understands that any of the systems, measures, or devices that are in effect at the time he or she accepts a deed for a Lot (or otherwise becomes an owner) may be abandoned, terminated, or modified by a Majority vote of the Board. The commencement of any access control systems or security measures or devices or controls will not be deemed to be an assumption of any duty on the part of the Association or Declarant with respect to the Project, the Owners, or any of the Owner's Permittees.

ARTICLE XI

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Section 11.01. Dispute Resolution Agreement. All Bound ADR Parties, as identified and defined below, agree to encourage the amicable resolution of claims, grievances, controversies, disagreements, or disputes involving the Project or the Project Documents in order to avoid or limit wherever possible the emotional and financial costs of litigation. Accordingly, each Bound ADR Party covenants and agrees that all Covered Claims, as defined below, between one or more Bound ADR Party must be resolved using the alternative dispute resolution procedures set forth below in this Declaration and the Bylaws in lieu of filing a lawsuit or initiating administrative proceedings. As used in the Project Documents, the term "**Bound ADR Parties**" means the Association, Board, Declarant, any affiliate of Declarant, any property manager or association manager for the Project, all Owners, any tenant of an Owner, any family member residing in the Owner's Detached Dwelling Unit, and any person not subject to this Declaration who voluntarily agrees to be subject to the dispute resolution procedures described below. Unless they otherwise agree, Mortgagees and Institutional Guarantors are not Bound ADR Parties. As used in the Project Documents, the term "**Covered Claims**" means all claims, grievances, controversies, disagreements, or disputes that arise in whole or part out of: (i) the interpretation, application, or enforcement of the Declaration or the other Project Documents; (ii) any alleged violation of the Project Documents by any of the Bound ADR Parties; (iii) the authority of the Association or the Board to take or not take any action under the Project Documents; (iv) the failure of the Declarant or the

Association or the Board to properly conduct elections, give adequate notice of meetings, properly conduct meetings, allow inspection of books and records, or establish adequate warranty and reserve funds; (v) the performance or non-performance by any of the Bound ADR Parties of any of their respective obligations or responsibilities under the Project Documents to or on behalf of any other Bound ADR Party; (vi) the design or construction of any of the Detached Dwelling Units within the Project (other than matters of aesthetic judgment by the Architectural Committee or the Board, all of which are not subject to further review under the alternative dispute resolution procedures or legal action); or (vii) any alleged violation or defect with respect to the maintenance or construction of the Common Area or any improvements or landscaping on the Common Area or the Areas of Association Responsibility. The term **"Covered Claims"**, however, specifically does not include any Exempt Claims of the type described below. The term **"Alleged Defects"** means only those Covered Claims described in subsections (vi) and (vii) above.

Section 11.02. Exempt Claims. The following claims, grievances, controversies, disagreements, and disputes (each an **"Exempt Claim"** and, collectively, the **"Exempt Claims"**) are exempt from the alternative dispute resolution provisions described in this Declaration:

(a) ***Collection of Assessments.*** Any action taken by the Association against any Bound ADR Party to enforce the collection of any Assessments, to enforce or foreclose any lien in favor of the Association, or to determine the priority of any lien for Assessments;

(b) ***Specific Actions.*** Any claim, grievance, controversy, disagreement, or dispute that primarily involves:

(i) Title to any Lot or Common Area;

(ii) A challenge to a property taxation or condemnation proceeding;

(iii) The eviction of a tenant from a Detached Dwelling Unit;

(iv) The breach of fiduciary duty by any one or more of the Board of Directors or officers of the Association;

(v) The rights of any Mortgagee or Institutional Guarantor;

(vi) An employment matter between the Association and any employee of the Association; or

(vii) The invalidation of any provision of the Declaration or any of the covenants and restrictions contained in the Project Documents.

(c) ***Injunctive Relief.*** Any suit by the Association to obtain a temporary or permanent restraining order or equivalent emergency equitable relief (together with any other ancillary relief as the court may deem necessary) in order to maintain the then-current status of the Project and preserve the Association's ability to enforce the architectural control provisions of the Project Documents and the use restrictions contained in this Declaration;

(d) ***Owner Actions.*** Any suit solely between Owners (that does not include as a party the Association or Declarant) seeking redress on any Covered Claim that would constitute a cause of action under federal law or the laws of the State of Arizona regardless of the existence of the Project Documents;

(e) ***Separate Written Contracts.*** Any action arising out of any separate written contract between Owners or between the Declarant and any Owner that would constitute a cause of action under the laws of the State of Arizona regardless of the existence of the Project Documents; and

(f) ***Not Bound Parties.*** Any suit in which less than all parties are Bound ADR Parties (unless the parties that are not Bound ADR Parties voluntarily agree to be subject to the alternative dispute resolution procedures established in this Declaration and the Bylaws).

Any Bound ADR Party having an Exempt Claim may submit it to the alternative dispute resolution procedures established in this Declaration and the Bylaws, but there is no obligation to do so and no obligation of any other Bound ADR Party to agree to have the Exempt Claim submitted to the alternative dispute resolution procedures. The submission of an Exempt Claim involving the Association or Declarant to the alternative dispute resolution procedures below requires the approval of the Association or Declarant, as applicable.

Section 11.03. Enforcement of Resolution. This agreement of the Bound ADR Parties to negotiate, mediate, and arbitrate all Covered Claims is specifically enforceable under the applicable arbitration laws of the State of Arizona. After resolution of any Covered Claim through negotiation, mediation, or arbitration in accordance with the provisions outlined above, if any Bound ADR Party fails to abide by the terms of any agreement or Arbitration Award, any other Bound ADR Party may file suit or initiate administrative proceedings to enforce the agreement or Arbitration Award without the need to again comply with the procedures set forth above. In this case, the Bound ADR Party taking action to enforce the agreement or Arbitration Award is entitled to recover from the non-complying Bound ADR Party (or if more than one non-complying Bound ADR Party, from all non- complying Bound ADR Parties pro rata) all costs incurred in enforcing the agreement or Arbitration Award, including, with limitation, attorney fees, and court costs.

Section 11.04. Alleged Defects. If any Owner or the Association desires or intends to bring a claim of any sort against the Declarant or its affiliates or contractors for an Alleged Defect, the following provisions will apply to provide full and fair notice of the existence of the Alleged Defect and an opportunity to repair or correct the Alleged Defect without costly and time-consuming litigation.

(a) ***Notice of Alleged Defect.*** If any Owner or the Association discovers an Alleged Defect, the discovering party (referred to as a "**Defect Claimant**") will give written notice to the Declarant of the Alleged Defect and, if known, the repair or remedy sought by the Defect Claimant.

(b) ***Right to Enter.*** Within a reasonable time after the receipt by Declarant of written notice of the Alleged Defect (or Declarant's independent discovery of a possible Alleged Defect), Declarant will have the right to enter the Project and any affected Detached Dwelling Units or Common Area to inspect, test, and, if deemed necessary or advisable by the Declarant in its sole discretion, cause the repair or correction of the Alleged Defect. All tests, inspections, and applicable repairs may be made by Declarant or its agents or independent contractors (including contractors and subcontractors) but can be commenced only after reasonable written notice by the Declarant to the Defect Claimant and must be made only during normal business hours.

(c) ***Declarant Discretion.*** In performing the tests, inspections, or repairs, as applicable, Declarant will be entitled to utilize methods or take actions that it deems appropriate or necessary, and Declarant's sole obligation with respect to the Defect Claimant will be to restore the affected area as close as reasonably possible to its condition prior to the testings, investigations, or repairs.

(d) ***No Extension of Warranties.*** The existence of this right to notice and an opportunity to inspect and/or cure will not be deemed to impose any obligation on the Declarant to test, inspect, or repair any Alleged Defect or to establish or extend any applicable warranty of any builder, developer, or seller (including Declarant) that may be applicable to the Detached Dwelling Unit or Common Area. Notwithstanding Section 11.05 below, the provisions of this Section 11.04 may not be modified, amended, waived, or terminated in any manner during any period of time that Declarant or its affiliates or contractors may remain liable or responsible for the Alleged Defect or any resulting injury or damage from the Alleged Defect, without the prior and express written consent of Declarant given in a recorded instrument.

Section 11.05. Amendments to Article XI. The alternative dispute resolution procedures established in Article XI of this Declaration may not be modified, amended, terminated, or waived in any manner without Declarant's prior and express written consent, as evidenced by a recorded instrument, for so long as Declarant owns at least one Lot within the Project. After Declarant ceases to own at least one Lot within the Project, the alternative dispute resolution procedures of Article XI may be modified, amended, or terminated in accordance with the procedures established in the Project Documents; however, to the extent any Covered Claim still involves the Declarant, the Declarant can elect for the Covered Claim to be governed by the alternative dispute resolution procedures previously contained in the Project Documents (as though not modified, amended, or terminated). Nothing contained in this Section 11.05 is intended to shorten, modify, or amend the provisions of Section 11.04 with respect to the notice and opportunity to inspect and/or cure an Alleged Defect.

Dated as of the Declaration Date.

Siesta Foothills Investors, L.L.C.,
an Arizona limited liability company

By: The DeHaven Company, an Arizona corporation, its Manager

By: _____

Its: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 1st day of April, 2003 ~~2002~~, by William Donoghue, the President of The DeHaven Company, an Arizona corporation, the Manager of Siesta Foothills Investors , L.L.C., an Arizona limited liability company, being authorized to do so for the purposes herein contained..

OFFICIAL SEAL
LAURA L. DUVALL
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires May 30, 2005

Laura L. Duvall
Notary Public

My Commission Expires:
May 30, 2005

EXHIBIT "A"

Lots 1 through 44, inclusive, and Tracts A through I, SIESTA FOOTHILLS, according to Book 627 of Maps, Page 49, records of Maricopa County, Arizona.