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When Recorded Return To:

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 SHAW & LINES, LLC
 4523 East Broadway Road, Suite 101
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**AMENDED AND RESTATED
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
 SHEA PATIO VILLAS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SHEA PATIO VILLAS (hereinafter referred to as the "Declaration") is made this 3rd day of October, 2006 by the Shea Patio Villas Homeowners Association, Inc., an Arizona non-profit corporation (the "Association").

WITNESSETH

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions for Shea Patio Villas was recorded at Docket 13672, Page 247, records of Maricopa County, AZ as amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions for Shea Patio Villas was recorded at Docket 16210, Page 120, records of Maricopa County, AZ (together, the "CC&Rs"); and

WHEREAS, the pursuant to the CC&Rs, the CC&Rs may be amended by an instrument in writing, executed and acknowledged by the then Owners of not less than seventy five percent (75%) of the Lots in the Project and the written approval of sixty-seven percent (67%) of the First Mortgage Holders; and

WHEREAS, in order to increase the readability of the CC&Rs and to amend and restate the CC&Rs to modernize and update the CC&Rs, this Declaration was created and approved by an instrument in writing, executed and acknowledged by the then Owners of not less than seventy five percent (75%) of the Lots in the Project and the written approval of sixty-seven percent (67%) of the First Mortgage Holders.

NOW, THEREFORE, the CC&Rs are of no further effect and are hereby deleted amended and restated by the Declaration as follows:

ARTICLE 1

DEFINITIONS

1.1 **"Annual Assessment"** means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.2 **"Architectural Committee"** means the architectural committee of the Association to be created pursuant to Section 5.9 of this Declaration and the Bylaws.

1.3 **"Architectural Committee Rules"** means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.9 of this Declaration and the Bylaws, as they may from time to time be amended or supplemented.

1.4 **"Areas of Association Responsibility"** means (i) all Common Area, including the Improvements and landscaping situated thereon, and (ii) any portion of the Improvements situated on a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association.

1.5 **"Articles"** means the Articles of Incorporation of the Association, as they may from time to time be amended.

1.6 **"Assessment"** means an Annual Assessment, Special Assessment or Lot Specific Assessment.

1.7 **"Association"** means the Shea Patio Villas Homeowners Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.

1.8 **"Association Lien"** means the lien created and imposed by Section 6.1 of this Declaration.

1.9 **"Association Property"** means any personal property owned or leased by the Association.

1.10 **"Association Rules"** means the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

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

1.12 **"Bylaws"** means the Amended and Restated Bylaws of the Association, as amended from time to time.

1.13 **"Common Area"** means all real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest. "Common Area" shall not include any real property, improvements or personal property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriff's sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action.

1.14 **"Common Expenses"** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.15 **"Declaration"** means this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

1.16 **"Exterior Alteration"** means any construction, installation, addition alteration, repair, change, change of color, landscaping, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon.

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

1.18 **"Improvement"** means any building, fence, wall or other structure or any swimming pool, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

1.19 **"Lessee"** means a third-party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein a "third party" is any Person who is not an Owner.

1.20 **"Lot"** means each parcel of real property designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

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

1.22 **"Member"** means any Person who is a Member of the Association.

1.23 **"Owner"** means the record owner, whether one or more Persons, of legal, beneficial or equitable title to the fee simple interest of a Lot. "Owner" shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the "Owner." "Owner" shall also include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. Section 33-741, *et*

seq. "Owner" shall not include purchasers under purchase contracts and receipts, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to such executory contracts pending the closing of a sale or purchase transaction.

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

1.25 **"Plat"** means the plat recorded in Book 212, page 5, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

1.26 **"Property" or "Project"** means the real property described on the Plat.

1.27 **"Project or Governing Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules, and the Architectural Committee Rules.

1.28 **"Purchaser"** means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

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

1.30 **"Resident"** means each individual occupying or residing in any Residential Unit.

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

1.32 **"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 three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.33 **"Special Assessment"** means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

1.34 **"Visible From Neighboring Property"** means, with respect to any given object, that the object is or would be visible to a person six feet tall, standing at ground level on any part of the neighboring property.

**ARTICLE 2
PLAN OF DEVELOPMENT**

2.1 **Property Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development and use of the Project and in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners.

**ARTICLE 3
USE RESTRICTIONS**

3.1 **Architectural Control.** In addition to any requirements imposed by Maricopa County or the City of Phoenix:

3.1.1 All Improvements constructed on Lots shall be of new construction, and no building or other structures shall be moved from other locations onto any Lot.

3.1.2 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.3 No Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

3.1.4 No Exterior Alteration shall be made or done without the prior written approval of the Architectural Committee.

3.1.5 Any Owner desiring approval of the Architectural Committee for any Exterior Alteration shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Exterior Alteration that the

Owner desires to make or perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove, in writing, an application for approval within forty-five (45) days after receipt of the application and any supporting information, plans and specifications requested by the Architectural Committee (the application shall not be deemed received until all supporting information, plans and specifications have been received), approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans.

3.1.6 The approval by the Architectural Committee of any Exterior Alteration pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Exterior Alteration subsequently submitted for approval.

3.1.7 Upon receipt of approval from the Architectural Committee for any Exterior Alteration, the Owner who requested such approval shall proceed to perform, construct or make the Exterior Alteration approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee, including plans deemed approved as a result of the Architectural Committee's failure to act, must be submitted to and approved in writing by the Architectural Committee. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

3.1.9 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any Exterior Alteration pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

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

3.1.11 The Architectural Committee Rules may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation.

3.1.12 The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Committee, pay to the Association a deposit in an amount determined by the

Architectural Committee to be used by the Association to remove any construction debris from a Lot that is allowed to accumulate in violation of Section 3.3 of this Declaration or to repair any damage to the Common Area. The Architectural Committee shall also have the right to determine which portion, if any, of the deposit will be nonrefundable. Any portion of the deposit that is refundable shall be refunded to the Owner by the Association upon the completion of construction of the Improvements, the removal of all construction debris from the Lot, and the repair of any damage to the Common Area occasioned by such construction.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, incomplete building, tent, shack, garage, or temporary buildings or structures of any kind, shall be used at any time for a residence. Temporary buildings, trailers or other structures used during the construction of Exterior Alterations approved by the Architectural Committee, interior remodeling, re-roofing or other work shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of one month without the prior written approval of the Architectural Committee.

3.3 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants.

3.4 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.5 Repair of Building. No Residential Unit, building or structure on any Lot or other property shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. In the event that any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt or shall be demolished.

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

3.7 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances of the City of Phoenix, and (iii) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended or does generate a profit, or (c) a license is required for such activity.

3.8 Leasing of Lots. No more than fifteen percent (15%) of the Lots of the Association may be leased at any given time to a Third Party. No Owner may lease a Lot for fewer than or greater than twelve (12) months. Any Owner engaged in leasing or subleasing activities as of the date of this Declaration shall be allowed to continue leasing or subleasing activities until said Lot is sold or conveyed to a Third Party. Any Lot Owner engaged in leasing or subleasing activity must, upon the sale or conveyance of said Lot, notify any potential buyer or person taking title that no more than fifteen percent (15%) of the Lots of the Association may be leased at any given time to a Third Party. For the purpose of this provision, "Third Party" shall be defined as any person who is not an Owner as that term is defined in this Declaration.

All lease agreements must be submitted to the Association prior to execution by the Owner. Owners shall also submit a "tenant registration form" to the Association for each existing tenant/lease, in a form prepared for the Association by the Board of Directors, no less than thirty (30) days prior to executing or extending a lease. The Association may charge a reasonable review and processing fee concerning the above. Additionally, any Owner wishing to lease his Lot must submit to the Association a security deposit in an amount to be determined by the Board of Directors (the "Security Deposit"). The Security Deposit shall be debited should any tenant of the Owner or the Owner fail to abide by the provisions of this Declaration.

Additionally, if an Owner fails to provide the "tenant registration form" to the Association as outlined above, the Association may impose reasonable monetary penalties as determined by the Board, in addition to other remedies available under this Declaration and Arizona law. The Association may also suspend an Owner's ability to Lease his Lot for a period of twelve (12) months. This rental restriction provision takes precedence over any inconsistent language in the Articles or Bylaws or Rules of the Association.

Owners may apply for a hearing before the Board for temporary or special variances in case of hardship. Permission to lease will be granted at the sole discretion of the Board of Directors.

"For Rent" or "For Lease" signs are strictly prohibited within the Association.

3.9 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.10 Other Uses, Activities and Facilities. The Association Rules may contain restrictions, limitations, rules and regulations governing any additional uses, activities, Improvements or facilities on a Lot or within the Project that are (i) Visible From Neighboring Property, (ii) visible from any Common Area or street, or (iii) that are deemed by the Association to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents. The following are some, but not all of the uses, activities, Improvements or facilities that may be governed by the Association Rules: animals; construction and maintenance activity; antennas; trash containers and collection; clothes drying facilities; signs; flags and flagpoles; basketball, tetherball and volleyball standards; motor vehicles; parking; trucks, trailers, campers and boats; towing of vehicles; carports and driveways; rooftop air conditioners; solar energy devices; sport courts; lighting; use of Common Area; amplifiers; window treatments; garage sales; and noise. The foregoing list is not intended to be exhaustive. The Association Rules are intended to be responsive to the changing needs of the Project and the desires of the Association's Members. Limitations will comply with Federal and State Laws and Regulations.

3.11 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article 3, the Association Rules or the Architectural Rules if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other Owners or Lessees or the Project and is consistent with the high quality of life intended for residents of the Project.

3.12 Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as

shown on the drainage plans on file with the county or municipality in which the Project is located.

3.13 Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house pets, shall be maintained in or on the Association and then only if such house pets are kept or raised solely as domestic pets (and not for commercial purposes) within an Owners Lot and patio or balcony allocated thereto. In no event may more than two (2) dogs occupy any Lot regardless of size and weight. No pet or other animal shall be allowed to make an unreasonable amount of noise, cause an odor or to become a nuisance. All dogs or other house pets permitted hereunder and capable of being walked on a leash shall be kept on a leash not to exceed six (6) feet in length when outside a Lot, and all pets shall be directly under the Lot Owner's control at all times. No Lot owner or any other lawful resident or guest or invitee thereof shall permit any such pet being kept in the Lot or the Limited Common Elements allocated to the Lot to relieve itself on any portion of the Common Elements, it being understood that it shall be the responsibility of such person to immediately remove any droppings from pets. No structure for the care, housing, confinement, or training of any animal or pet shall be maintained on any portion of the Common Elements (including Limited Common Elements) or in any Lot so as to be visible from the exterior of the Building in which the Lot is located. Upon the written request of any Lot Owner, the Board of Directors shall determine whether, for the purposes of this section, a particular animal or bird is a generally recognized house pet, a nuisance, or whether the number of pets in any Lot or the Limited Common Elements allocated thereto is reasonable. The right of Lot Owners and other occupants of Lots to maintain a reasonable number of house pets in or on the Association pursuant to this section is expressly subject to the right of the Board of Directors to restrict such house pets to only certain portions of the Association and to prospectively further restrict the size and number of dogs or other pets which may be maintained or kept in the Lots or the Limited Common Elements allocated thereto.

3.14 General Restrictions Regarding Parking of Vehicles. No truck, mobile home, mini or standard size mobile home, travel trailer, tent trailer, trailer, all-terrain vehicle, bus, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle or any domestic or foreign car, station wagon, sport wagon, pick-up truck of less than ¾ ton capacity with camper shells not exceeding eight (8) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle and similar non-commercial and non-recreational vehicles that are used by the Owner of the Lot or his family members, tenants, guests or invitees for family and domestic purposes and which are used on a regular and recurring basis for basic transportation may be parked, kept, or maintained on any part of the Association other than in the carport of a Lot.

3.15 Motor Vehicle Repair and Towing of Vehicles. Other than temporary emergency repairs, no Vehicle shall be constructed, reconstructed, serviced or repaired, and no inoperable Vehicle may be stored on any portion of the Association, other than in the Lot's carport. The Board of Directors shall have the right to have any Vehicle parked,

kept, maintained, constructed, reconstructed or repaired in violation of the Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.

ARTICLE 4 EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Every Owner or Lessee, and any person residing with such Owner or Lessee, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.12 of this Declaration.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners or Lessees.

(iii) The right of the Association to suspend the right of an Owner or Lessee and such Owner's or Lessee's family, tenants and guests to use the Common Area if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Lessee has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right, without the specific written consent of the Association, to use the Common Area until the termination or expiration of such lease.

4.2 **Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this Easement, it

shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, waterlines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed or as approved by the Board.

4.3 Easement in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.3.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.3.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

4.3.3 For correction of emergency conditions in one or more Lots;

4.3.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

4.3.5 For inspection of the Lots (i) in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot, or (ii) to satisfy the disclosure requirements, if any, of applicable law.

ARTICLE 5 THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws.

5.3 The Association Rules. The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Areas of Association Responsibility, (iii)

the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas, or (iv) any other subject within the jurisdiction of the Association. Except as limited herein, the Association Rules may be adopted, amended and repealed by a majority of the members of the Board. In the event that the Association Rules establish restrictions or limitations on the use and maintenance of Lots, such rules and regulations may be adopted, amended or repealed by three-fourths (3/4ths) of the members of the Board. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

5.6 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

5.7 Classes of Members. The Association shall have Members who shall be Owners of Lots. A Member shall be entitled to one (1) vote for each Lot owned.

5.8 Transfer of Membership. The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms,

conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

5.9 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The members of the Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The members of the Architectural Committee shall be appointed by the Board. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions (the "Architectural Committee Rules"). The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any request for approval submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

5.10 Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent of affirmative vote of Owners representing at least sixty-seven percent (67%) of the votes entitled to be cast by members of the Association.

5.11 Suspension of Voting Rights. If an Owner otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Project Documents, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

ARTICLE 6 COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIEN THEREFOR

6.1 Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties. Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each

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

6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot. The Board of Directors, without the express authorization of the Members, may increase the Annual Assessment up to ten percent (10%) greater than the immediately preceding fiscal year's Annual Assessment. Any increase in the Annual Assessment above ten percent (10%) must be approved by a majority of the Membership.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may, subject to the ten percent (10%) limit set forth in Section 6.2.1 above, increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the Association's fiscal year.

6.4 **Rate of Assessment.** The amount of the Annual Assessment for each Lot shall be the amount obtained by dividing the anticipated Common Expenses of the Association for the Assessment Period for which the Annual assessment is being levied by the total number of Lots.

6.5 **Special Assessments.** The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of sixty-seven percent

(67%) of the votes entitled to be cast by Members who are voting in person, by mail or by proxy at a meeting duly called for such purpose.

6.6 Lot Specific Assessments. Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Governing Documents that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

6.7 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or other Area of Association Responsibility, or that the Association is not enforcing the Project Documents.

6.8 Purposes for which Association's Funds may be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project and the Owners. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and residents, maintenance of landscaping on Common Areas and public right-of-ways and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers and directors of the Association and any other purposes permitted by applicable statutes or the Project Documents.

6.9 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.10 Transfer, Refinance and Disclosure Fees. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his or her Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

6.11 Fines and Penalties. In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.

6.12 Notice of Violation, Appeal and Payment of Fines and Penalties.

6.12.1 The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents by the Owner, his family or guests. A Notice of Violation shall contain (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner or Lessee for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

6.12.2 A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Residential Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

6.12.3 The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the

Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

6.12.4 Any fines or penalty levied pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

6.13 Costs of Enforcement. Any costs incurred by the Association in enforcing this Declaration or the other Project Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, reasonable attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to Section 6.1.

6.14 Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association.

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

6.14.2 As set forth in Section 6.1, the Association shall have a lien on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees levied against or charged to a Lot or the Owner thereof. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including late charges, interest, costs of collection, lien recording fees, lien release fees, reasonable attorneys' fees and the costs of preparing the Notice of Lien.

6.14.3 Subject to applicable statutes, the Lien created by Section 6.1 shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body.

6.14.4 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

6.14.5 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right, if any, to the use of the recreational facilities that are part of the Common Area.

6.14.6 The Board may, without notice or demand, enforce the lien established pursuant to Section 6.1.

6.14.7 The Board may, without notice or demand, institute an action at law for a money judgment to recover the amount of the delinquent Assessment together with all fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees.

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

ARTICLE 7 MAINTENANCE

7.1 Areas of Association Responsibility.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the (i) Common Area, and all Improvements located thereon, and (ii) all Association Property.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.2 **Lots.** Each Owner shall be responsible for maintaining, repairing or replacing all buildings, Residential Units, rear enclosed patio areas, or other Improvements situated on his or her Lot. All buildings, Residential Units, and other Improvements shall at all times be kept in good condition and repair. No yard equipment, wood piles or storage area may be maintained so as to be Visible From Neighboring Property or streets.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, Lessee, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Association Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Association Lien.

7.4 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Association Lien.

7.5 Maintenance Easement. The rights and duties of Owners of Lots with respect to common walls shall be as follows:

7.5.1 Each Owner and Lessee shall permit the Owner of adjoining Lots, or their representatives, contractors, or employees, when reasonably required and in a reasonable manner, to enter his or her Lot for the purpose of repairing or maintaining that portion of such Owner's Residential Unit that is accessible only by entering upon such adjoining Lot.

ARTICLE 8 INSURANCE

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

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Area of Association Responsibility and all other portions of the

Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.2 Property insurance on all Area of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Area of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Directors and officers liability insurance in an amount to be determined by the Board;

8.1.5 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

8.1.6 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as the Association; and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

8.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

8.5 Repair and Replacement of Damaged or Destroyed Common Area. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

8.6 Owner Insurance. It shall be the responsibility, the requirement and the obligation of the Owner to provide for himself:

1. Owner's liability insurance;
2. Theft or other insurance covering personal property damage and loss;
3. Casualty insurance on the portion of the Lot which is not considered part of the Common Area including, but not limited to, walls, roofs, patios, carpeting, drapes, wall covering, fixtures, furniture, furnishings, appliances and other personal property; and

4. Insurance which is not carried by the Association and which the Owner desires.

ARTICLE 9 GENERAL PROVISIONS

9.1 **Enforcement.** The Association or any Owner shall have the right to enforce Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the nonprevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

9.2 **Method of Termination.** This Declaration shall continue in full force and effect unless terminated by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes of in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3 **Amendments.**

9.3.1 This Declaration may be amended at any time by the written approval or the affirmative vote of Owners of not less than two-thirds (2/3rds) of the Lots.

9.3.2 Notwithstanding the requirements of Section 9.3.1, the Board may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Board.

9.3.3 Any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the county Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

9.4 **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

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

9.6 **Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

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

9.8 **Laws, Ordinances and Regulations.**

9.8.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

9.8.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the

Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

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

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

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

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

9.13 Condemnations of Common Area. If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association

decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds may either be disbursed by the Association to the Owners with an equal share being disbursed to each Lot or retain such funds as additional operating or capital reserves.

IN WITNESS WHEREOF, the Shea Patio Villas Homeowners Association, Inc. an Arizona nonprofit corporation, has executed this Declaration as of the day and year first above written.

SHEA PATIO VILLAS HOMEOWNERS ASSOCIATION, INC.
an Arizona nonprofit corporation

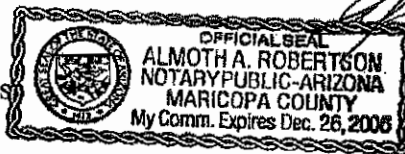
By:  _____

Its: President

State of Arizona)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 3RD day of OCTOBER, 2006, by MARK GLUCKMAN, the Shea Patio Villas Homeowners Association, Inc., an Arizona nonprofit corporation, for and on behalf of the corporation.

My Commission Expires:



Almoth A. Robertson
Notary Public

SECRETARY'S ATTESTATION

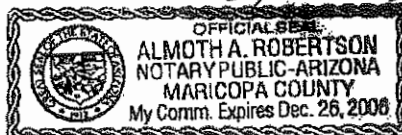
I, JILLIAN DISTEFANO, being the duly elected Secretary of the Shea Patio Villas Homeowners Association, Inc., hereby attest that the foregoing Amendment was agreed to by an instrument in writing, executed and acknowledged by the then Owners of not less than seventy five percent (75%) of the Lots in the Project and the written approval of sixty-seven percent (67%) of the First Mortgage Holders.

By: *Jillian Distefano*
Secretary, Shea Patio Villas Homeowners Association, Inc.

State of Arizona)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 3RD day of OCTOBER, 2006, by JILLIAN DISTEFANO, the Secretary of the Shea Patio Villas Homeowners Association, Inc., an Arizona nonprofit corporation, for an on behalf of the corporation.

My Commission Expires:



Almoth A. Robertson
Notary Public

Unofficial 20 Document

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So

When Recorded Return To:

Chandler W. Travis, Esq.
The Travis Law Firm, PLC
100621 S. 51st Street, Suite 103
Phoenix, Arizona 85044

FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHEA PATIO VILLAS

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHEA PATIO VILLAS ("First Amendment") is made as of this 2nd day of May, 2013 by the Shea Patio Villas Homeowners Association, Inc., an Arizona non-profit corporation (the "Association").

WITNESSETH

WHEREAS, that certain Amended And Restated Declaration of Covenants, Conditions and Restrictions for Shea Patio Villas was recorded at recording number 2006-1328640, records of Maricopa County, Arizona ("Declaration"); and

WHEREAS, pursuant to Article 9, Section 9.3.1 of the Declaration, the Declaration may be amended at any time by the written approval or the affirmative vote of Owners of not less than two-thirds (2/3rds) of the Lots.

WHEREAS, the Owners of greater than two-thirds of the Lots voted in the affirmative to amend the Declaration as set forth below and to cause the approved First Amendment to be recorded pursuant to Article 9, Section 9.3.3 of the Declaration.

NOW THEREFORE, the Declaration is hereby amended as follows:

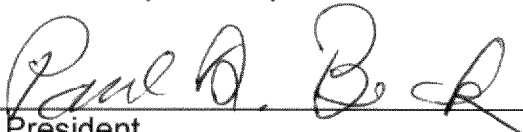
- Capitalized terms used in this First Amendment and not otherwise defined herein shall have the meanings given to them in the Declaration.
- Article 7, Section 7.2 of the Declaration is amended to read as follows:

Section 7.2 **Lots.** Each Owner shall be responsible for maintaining, repairing or replacing all buildings, Residential Units, rear enclosed patio areas, or other Improvements situated on his or her Lot. All buildings, Residential Units, or other Improvements shall at all times be kept in good condition and repair. As to Residential Units, the Association shall be responsible to paint the exterior of the Residential Units at a ten-year life cycle. The ten-year life cycle shall commence when the Association next paints the exterior of the Residential Units following the adoption of this amendment. The Association shall not be responsible for maintaining, repairing or replacing the exterior of the Residential Units and the related painting as necessary to keep the Residential Units in compliance with Article 3, Section 3.5 of this Declaration. No yard equipment, wood piles or storage area may be maintained so as to be Visible From Unofficial Document Neighboring Property or streets.

3. Each reference in the Declaration to "this Declaration" shall be deemed to refer to the Declaration as amended hereby.
4. Except as expressly amended by this First Amendment, all terms and conditions of the Declaration shall remain unchanged.

IN WITNESS THEREOF, the undersigned President of the Shea Patio Villas Homeowners Association, Inc., an Arizona non-profit corporation, has executed this First Amendment as of the day and year first above written.

Shea Patio Villas Homeowners Association, Inc.,
an Arizona non-profit corporation

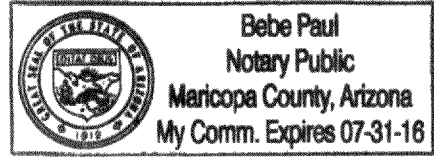
By: 
its President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 2nd day of May, 2013, before me, the undersigned notary public, personally appeared Paul Donald Beck, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purpose therein contained.

Bebe Paul

Unofficial Document



Notary Public
Notary Seal

My Commission expires 7/31/2016