

MOUNTAIN VISTA RANCH OWNER'S ASSOCIATION

CC & R Violation and Enforcement Policy

The Mountain Vista Ranch Owner's Association policy for Covenants, Conditions, and Restrictions violation enforcement and any applicable monetary fines. *The goal of this policy is to protect all Members of the Association from excessive costs in enforcing the CC&R's as outlined in Article IV, Section 4.3 and Article X, Section 10.2 and to safeguard the value of the member's property.*

First Notice:

A formal Notice of Violation will be sent stating the CC&R's article and section. The owner will have 14 calendar days to take corrective action or the Board will impose a \$25.00 fine upon the owner. The Notice will include a statement that if non-compliance continues an additional fine will be assessed.

Second Notice:

This formal Notice of Violation will again define the violation and impose a \$25.00 fine with a corrective period of 15 calendar days. The Notice will include a statement that if non-compliance continues, an additional fine could be assessed. As per the CC&R's, the owner will have the opportunity to dispute the fine in writing or by requesting a hearing before the Board within 14 days of the date of the violation.

Third Notice:

This formal Notice of Violation will impose an additional fine of \$50.00 and will state all the conditions that were in the second notice. It will also state that corrective action could be taken at the discretion of the Board of Directors at the owners expense.

Fourth Notice:

This formal Notice of Violation will impose a \$100.00 fine and state that all the conditions of the previous notice. It will add that legal action could be taken.

Once the fines exceed an aggregate amount of \$375.00, the collection of the fines and enforcement of the violations will be turned over to an attorney for legal action.

All due care will be taken to ensure that the violation is verified and defined in the CC&R's or any other approved Association documents.

MOUNTAIN VISTA RANCH HOMEOWNER'S ASSOCIATION

CC & R Violation and Enforcement Policy for Trash and Recycling Containers

The Mountain Vista Ranch Homeowner's Association policy for Covenants, Conditions, and Restrictions violation enforcement and any applicable monetary fines. *The goal of this policy is to protect all Members of the Association from excessive costs in enforcing the CC&R's as outlined in Article IV, Section 4.3 and Article X, Section 10.2 and to safeguard the value of the member's property.*

First Notice:

A formal Notice of Violation will be sent stating the CC&R's article and section. The owner will have 7 calendar days to take corrective action or the Board will impose a \$5.00 fine upon the owner. The Notice will include a statement that if non-compliance continues an additional fine will be assessed.

Second Notice:

This formal Notice of Violation will again define the violation and impose a \$5.00 fine with a corrective period of 7 calendar days. The Notice will include a statement that if non-compliance continues, and additional fine could be assessed. As per the CC&R's, the owner will have the opportunity to dispute the fine in writing or by requesting a hearing before the Board within 7 days of the date of the violation.

Third Notice:

This formal Notice of Violation will impose an additional fine of \$5.00 and will state all the conditions that were in the second notice. It will also state that corrective action could be taken at the discretion of the Board of Directors at the owner's expense.

Fourth Notice:

This formal Notice of Violation will impose a \$5.00 fine and state that all the conditions of the previous notice. It will add that legal action could be taken.

Once the fines exceed an aggregate amount of \$100.00, the collection of the fines and enforcement of the violations will be turned over to an attorney for legal action.

All due care will be taken to ensure that the violation is verified and defined in the CC&R's or any other approved Association documents.

Unofficial Document

When recorded return to:

MOUNTAIN VISTA RANCH, L.L.C.
2425 E. Camelback Road, Suite 900
Phoenix, Arizona 85016
Attn: Katherine L. Astrom

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

96-0579138 08/16/96 12:32

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MOUNTAIN VISTA RANCH

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This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 12th day of August, 1996, by Mountain Vista Ranch, L.L.C. (f/k/a HW, L.L.C.), an Arizona limited liability company (the "Declarant").

Declarant is the owner of the real property described in Exhibit "A," which is attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article 1 below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance hereof, this Declaration provides for the creation of Mountain Vista Ranch Owners' Association, Inc., an Arizona nonprofit corporation, to own, operate and maintain Common Areas, as defined below, and to administer and enforce the provisions of this Declaration, the By-Laws, and the use restrictions and rules promulgated pursuant to this Declaration.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the title to the real property subjected to this Declaration. This Declarat^{Unofficial Document} be binding upon all parties having any right, title or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

This document does not and is not intended to create a condominium within the meaning of the Arizona Condominium Act, A.R.S. §§ 33-1201 to 33-1270.

ARTICLE I

DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions, except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Area of Common Responsibility". The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contracts, or agreements.

1.2 "Articles of Incorporation" or "Articles". The Articles of Incorporation of Mountain Vista Ranch Owners' Association, Inc.,

as filed with the Arizona Corporation Commission of the State of Arizona.

1.3 "Association". Mountain Vista Ranch Owners' Association, Inc., an Arizona nonprofit corporation, its successors or assigns.

1.4 "Base Assessment". Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.

1.5 "Board of Directors" or "Board". The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the Board of Directors under Arizona corporate law.

1.6 "Builder". Any Person which purchases five or more Units for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.7 "By-Laws". The By-Laws of Mountain Vista Ranch Owners' Association, Inc., as they may be amended.

1.8 "Class "B" Membership Period". The period of time during which the Class "B" Member is ^{Unofficial Document} ~~is~~ to appoint a majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.

1.9 "Common Area". All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Exclusive Common Area, as defined below.

1.10 "Common Expenses". The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Membership Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class "A" vote of the Association.

1.11 "Community-Wide Standard". The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Declarant.

1.12 "Covenant to Share Costs". That certain Declaration of Easements and Covenant to Share Costs, if any, executed by Declarant and recorded in the Public Records which creates certain easements for the benefit of the Association and the present and future owners of the real property subject thereto and which obligates the Association and such owners to share the costs of maintaining certain property described therein.

1.13 "Declarant". MOUNTAIN VISTA RANCH, L.L.C., an Arizona limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.14 "Design Guidelines". The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article IX.

1.15 "Exclusive Common Area". A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article II.

1.16 "Master Plan". The land use plan for the development of Mountain Vista Ranch prepared by pd/Saurey Associates and approved by the Town of Surprise, as ^{Unofficial Document} amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B" that Declarant may from time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article VII.

1.17 "Member". A Person subject to membership in the Association pursuant to Section 3.2.

1.18 "Mortgage". A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.19 "Mortgagee". A beneficiary or holder of a Mortgage.

1.20 "Mortgagor". Any Person who gives a Mortgage.

1.21 "Neighborhood". Each separately developed residential area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each cluster home development or single-family detached housing development may constitute a

separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined below) having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 3.4.

1.22 "Neighborhood Assessments". Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 8.1 and 8.4.

1.23 "Neighborhood Association". An Owners Association having concurrent jurisdiction with the Association over any Neighborhood.

1.24 "Neighborhood Expenses". The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time Unofficial Document y be authorized herein or in Supplemental Declarations applicable to such Neighborhood(s).

1.25 "Owner". One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee Owner) will be considered the Owner.

1.26 "Person". A natural Person, a corporation, a partnership, a trustee, or any other legal entity.

1.27 "Properties". The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article VII.

1.28 "Public Records". The Office of the County Recorder of Maricopa County, Arizona.

1.29 "Special Assessment". Assessments levied in accordance with Section 8.6.

1.30 "Specific Assessment". Assessments levied in accordance with Section 8.7.

1.31 "Supplemental Declaration". An instrument filed in the Public Records pursuant to Article VII which subjects additional

property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.32 "Unit". A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, townhouse Units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area, common property of any Neighborhood Association, or property dedicated to the public. In the case of a building within a structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in t^{Unofficial Document}ing paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

1.33 "Voting Member". The representative selected by the Class "A" Members within each Neighborhood to be responsible for casting all Class "A" votes attributable to Units in the Neighborhood on all matters requiring a vote of the membership (except as otherwise specifically provided in this Declaration and in the By-Laws). The term "Voting Member" shall also refer to alternate Voting Members acting in the absence of the Voting Member and any Owners authorized personally to cast the votes for their respective Units pursuant to Section 3.4(b).

ARTICLE II

PROPERTY RIGHTS

2.1 Common Area. Every Owner shall have, appurtenant to the title to the Unit, a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Board to suspend the right of an Owner to use recreational facilities, if any, within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association after notice and a hearing pursuant to Section 3.24 of the By-Laws;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area subject to such approval requirements as may be set forth in this Declaration and the Owners' easement if such property is necessary for ingress and egress for such Owner;

(f) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(g) The right of the Board to permit use of any recreational facilities sit^{Unofficial Document} the Common Area by Persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or Personal property as security for money borrowed or debts incurred subject to the approval requirements set forth in Section 2.5; and

(i) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2 Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Units within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated

with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Units in the Neighborhood(s) to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed by which the Declarant conveys the Common Area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 7.1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Voting Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Area is assigned, if previously assigned, and within the Neighborhood(s) to which the Exclusive Common Area is to be assigned or reassigned. As long as the Declarant owns any property described on Exhibits "A" or "B" for development and/or sale, any such assignment or reassignment shall also require the Declarant's written consent.

The Association ^{Unofficial Document} ~~may~~ approval of a majority of the members of the Neighborhood Committee or Board of Directors of the Neighborhood Association for the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Area.

2.3 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.4 Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or

proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Voting Members representing at least seventy-five percent (75%) of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply; or

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

2.5 Actions Requiring Owner Approval. If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs is insuring or guaranteeing the Mortgage on any Unit, then the following ac^{Unofficial Document} 1 require the prior approval of Voting Members representing not less than two-thirds (2/3) of the total Class "A" votes in the Association and the consent of the Class "B" Member, if such exists: merger, consolidation or dissolution of the Association; annexation of additional property other than that described on Exhibit "B;" and dedication, conveyance or mortgaging of Common Area. Notwithstanding anything to the contrary in Section 2.4 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership may adopt pursuant to Article X. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design

Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Arizona.

3.2 Membership. Every Owner automatically shall be, upon taking title to a Unit, a Member of the Association. Membership is appurtenant to, and inseparable from, Ownership of the Unit. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural Person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3 Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there ^{Unofficial Document} only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.11. All Class "A" votes shall be cast as provided in Section 3.3(c) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Membership Period, as specified in Section 3.3 of the By-Laws. If the Class "B" Member relinquishes control of the Board prior to the termination of the Class "B" Membership Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Section 3.19 of the By-Laws.

The Class "B" membership shall terminate as provided in Section 3.3 of the By-Laws. Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Voting Member representing the Neighborhood of which the Unit is a part,

as provided in Section 3.4(b). The Voting Member may cast all such votes as it, in its discretion, deems appropriate.

In any situation where a Member is entitled personally to exercise the vote for his Unit and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

3.4 Neighborhoods and Voting Members.

(a) Neighborhoods. Every Unit shall be located within a Neighborhood. The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except as otherwise required by law. Any Neighborhood which does not have a Neighborhood Association may elect a Neighborhood Committee, as described in Section 5.3 of the By-Laws, to represent the interests of Owners of the Units in such Neighborhood.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood ^{aUnofficial Document} he affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Neighborhood, the Association may provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Article VIII hereof.

Exhibit "A" to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration, shall initially assign the property described therein to a specific Neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. So long as it has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to redesignate Neighborhood boundaries; provided, two or more existing Neighborhoods shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods.

The Owner(s) of a majority of the total number of Units within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two or more Neighborhoods. Such petition shall be in writing and

shall include a survey of the entire parcel which indicates the proposed boundaries of the new Neighborhoods or otherwise identifies the Units to be included within the proposed Neighborhoods. Such petition shall be deemed granted thirty (30) days following the filing of all required documents with the Board unless the Board of Directors denies such application in writing within such 30-day period. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(b) Voting Members. Each Neighborhood shall elect a Voting Member who shall be responsible for casting all votes attributable to Units owned by Class "A" Members in the Neighborhood on all Association matters requiring a membership vote, except as otherwise specified in this Declaration or the By-Laws. In addition, each Neighborhood shall elect an alternate Voting Member who shall be responsible for casting such votes in the absence of the Voting Member. The Voting Member and alternate Voting Member from each Neighborhood shall be elected on an annual basis, either by written ballot cast by mail or at a meeting of the Class "A" Members within such Neighborhood, as the Board determines; provided, upon written petition signed by Class "A" Members holding at least 10% of the votes attributable to Units within any Neighborhood, th^{Unofficial Document} for such Neighborhood shall be held at a meeting. The presence, in Person or by proxy, of Class "A" Members representing at least twenty-five percent (25%) of the total Class "A" votes attributable to Units in the Neighborhood shall constitute a quorum at any Neighborhood meeting.

The Board shall call for the first election of a Voting Member from a Neighborhood not later than one (1) year after the conveyance of a Unit in the Neighborhood to a Person other than a Builder. Subsequent elections shall be held within thirty (30) days of the same date each year. Each Class "A" Member who owns a Unit within the Neighborhood shall be entitled to cast one equal vote per Unit owned. The candidate who receives the greatest number of votes shall be elected as Voting Member and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Member. The Voting Member and the alternate Voting Member shall serve a term of one year and until their successors are elected.

Any Voting Member may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the total number of Units owned by Class "A" Members in the Neighborhood which the Voting Member represents.

Until such time as the Board first calls for election of a Voting Member for any Neighborhood, the Owners within such Neighborhood shall be entitled Personally to cast the votes attributable to their respective Units on any issue requiring a

vote of the Voting Members under this Declaration, the By-Laws, or the Articles.

ARTICLE IV

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other Personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2 Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within Unofficial Document parties described in Exhibits "A" or "B," Personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. The Declarant shall convey the initial Common Area to the Association prior to the conveyance of a Unit to any Person other than a Builder.

4.3 Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the By-Laws, or Association rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with Section 3.24 of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit Maricopa County or the Town of Surprise to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests. For so long as the Declarant owns any property described on Exhibits "A" or "B," the Declarant may designate sites within ^{Unofficial Document} the Properties for fire, police and utility facilities, public schools and parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the Owner consents.

4.6 Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under the Articles of Incorporation and Arizona law.

The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no Personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member

harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of Common Area. The Association may dedicate portions of the Common Area to Maricopa County, the Town of Surprise, or to any other local, state, or federal government or quasi-governmental entity, subject to such approval as may be required by Section 2.5.

4.8 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measures, including any mechanism or system for limiting access to the Properties, can not be ^{Unofficial Document} circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and consents to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9 Powers of the Association Relating to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association or Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may (1) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association, and (b) require that a proposed budget include certain items and that expenditures be made therefor.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood Committee shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association or Neighborhood Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 8.7. Assessments may be collected as a Specific Assessment hereunder and shall be subject to all lien rights provided for in Article VIII.

ARTICLE V

MAINTENANCE

5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common responsibility, which shall include, but not be limited to:

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(i) all landscaping and other flora, structures and improvements, including any private street, linear park, bike and pedestrian pathways/trails, situated upon the Common Area;

(ii) landscaping within public rights-of-way within or abutting the Properties;

(iii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, or any contract or agreement for maintenance thereof entered into by the Association;

(iv) all retention ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention systems for the Properties, including any retaining walls and any fountains, lighting, pumps, conduits and similar equipment installed therein or used in connection therewith; and

(v) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice and the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the

Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

(vi) all front yard landscaping as may be installed on "companion home" lots as may be dictated by any Supplemental Declaration, the costs and expenses of which shall be charged as a Neighborhood Expense unless the Board determines that other treatment of the Lots is appropriate.

(vii) such additional maintenance areas located outside the Properties or within the public rights-of-way for which the Association assumes maintenance responsibility.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination with a class.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors ^{Unofficial Document} determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing seventy-five percent (75%) of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the area of Common responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the base Assessment, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, the Covenant to Share Costs, other recorded covenants,

or agreements with the Owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Upon resolution of the Board of Directors, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, greenspace, walls or fences between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and retention ponds within the Neighborhood, regardless of Ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise ^{Unofficial Document 1} by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Neighborhood's Responsibility. Any Neighborhood Association whose common property is adjacent to any portion of the Common Area upon which a wall, other than a wall which forms part of a building, is constructed shall maintain and irrigate that portion of the Common Area between the wall and the Neighborhood Association's property line. Any Neighborhood Association whose common property fronts on any roadway within the Properties shall maintain and irrigate the landscaping on that portion of the Common Area or right-of-way between the property line and the nearest curb of such roadway.

Any Neighborhood Association having responsibility for maintenance within a particular Neighborhood pursuant to additional covenants applicable to such Neighborhood, including, but not limited to, front yard landscaping maintenance, shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may

perform such responsibilities and assess the costs as a Specific Assessment against all Units within such Neighborhood as provided in Section 8.7.

5.4 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or Owner and/or a Neighborhood Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5 Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Disputes. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurance improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, the "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of Ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement costs of the insured improvements;

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(ii) Commercial general liability insurance on the Area of Common responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, Personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent Person would obtain, the Association shall obtain such additional coverage or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment, but not less than an amount equal to one-sixth (1/6th) of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance and building ordinance coverage.

In addition, the Association may obtain and maintain property insurance on the insurable improvements within any Neighborhood in such amounts and with such coverages as the Owners in such Neighborhood may agree upon pursuant to Section 3.4(a). Any such policies shall provide for a certificate of insurance to be furnished to the Neighborhood Association or Neighborhood Committee, as applicable, and to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common responsibility shall be Common Expenses and shall be included in the Base Assessment, except that (i) premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Units within the benefitted Neighborhood as a Neighborhood Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified ^{Unofficial Document}Per~~sons~~, at least one of whom must be familiar with insurable replacement costs in the Metropolitan Phoenix, Arizona area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.7.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Arizona which satisfies the requirements of the Federal National Mortgage Association, or such other

secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners of Units within the Neighborhood and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement; and

(v) include an agreed upon endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

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(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(vi) a cross liability provision; and

(vii) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, relating to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by

insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association, and the Class "B:" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost or repair or reconstruction, or both, are not available to the Association with such sixty-day (60) period, the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no altern^{Unofficial Document} ovements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Voting Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1.(a).

6.2 Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes

responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Unit and the Owner thereof pursuant to Section 8.7.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Unit. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

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ARTICLE VII

ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Annexation Without Approval of Membership. Until all property described on Exhibit "B" has been subjected to this Declaration or fifteen (15) years after the recording of this Declaration in the Public Records, whichever is earlier, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public records describing the property being annexed. Such Supplemental Declaration shall not require the consent of Voting Members, but shall require the consent of the Owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

It is the Declarant's intent to develop the property in Exhibits "A" and "B" to this Declaration in "legal phases." Until all of the property described in Exhibit "B" has been subjected to this Declaration or fifteen (15) years after the recording of this Declaration in the Public Records, each parcel of land subjected to this Declaration may be further subdivided by the recording of additional plats subdividing such parcel into two (2) or more Units. A "legal phase" for purposes of this Declaration, shall consist of all property shown on a single page of a plat which subdivides a parcel subject to this Declaration into two (2) or more Units.

7.2 Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the Owner of such property, the affirmative vote of Voting Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the Owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any ^{Unofficial Document} tion shall be effective upon filing unless otherwise provided therein.

7.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Section 7.1, for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

7.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the Owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or "B."

ARTICLE VIII

ASSESSMENTS

8.1 Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four (4) types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 8.6; and (d) Specific Assessments as described in Section 8.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (computed from the due date of such assessment at a rate of ten percent (10%) per annum or such higher rate as the Board may establish, subject to the limitations of Arizona law), late charges in such amount as the Board may establish by resolution, costs, and reasonable attorneys' fees, shall be a charge and ^{Unofficial Document} ~~conclusive~~ lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.8. Each such assessment, together with interest, late charges, costs and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall

be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2 Declarant's Obligation for Assessments. During the Class "B" Membership Period, Declarant may annually elect either to pay regular assessments on all of its unsold Units or to pay the difference between the amount of assessments levied on all of the Units subject to assessment ^{Unofficial Document} amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of such election, the Association shall have a lien against all Units owned by the Declarant which have been subjected to the Declaration to secure the Declarant's obligations under this section, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against each Unit under Section 8.8. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Membership Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.3 Computation of Base Assessment. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.5.

Base Assessments shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be

generated through the levy of Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, as well as any income expected pursuant to the Covenant to Share Costs.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.2), which may be treated as either a contribution or an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. ^{Unofficial Document} budget and assessment shall become effective unless disapproved at a meeting by Voting Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association and seventy-five percent (75%) of the total number of Voting Members, and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.4 Computation of Neighborhood Assessments. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners in accordance with Section 3.4(a), any additional costs shall be added to such budget.

Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood benefitted thereby and levied as a Neighborhood Assessment; provided, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefitted Units in proportion to the benefit received.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners of a majority of the Units in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Units in such Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services required ^{Unofficial Document} by the Neighborhood.

If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.5 Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets within the Area of Common responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the budget period.

8.6 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of

Voting Members (if a Common Expense) or Owners (if a Neighborhood Expense) representing at least sixty-seven percent (67%) of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the special Assessment is approved.

8.7 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with By-Laws Section 3.24, before levying any Specific Assessment under this subsection.

The Association may also levy a Specific Assessment against any of the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the articles, the By-Laws, and rules; provided the Board gives prior written notice to the Owners of Units in, or the Voting Mem^{Unofficial Document}enting, the Neighborhood and an opportunity for such Owners or Voting Member to be heard, in accordance with By-Laws Section 3.24, before levying any such assessment.

8.8 Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Arizona law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except: (1) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.9, including such acquirer, its successors and assigns.

8.9 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.10 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from ^{Unofficial Document} obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time, the Association may retroactively assess any shortfalls in collections.

8.11 Exempt Property. The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) Any property dedicated to and accepted by any governmental authority or public utility; and

(c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

8.12 Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6th) of the annual Base Assessment per Unit for that year. This amount shall be in

addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

ARTICLE IX

ARCHITECTURAL STANDARDS

9.1 General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article, and approval of the appropriate committee under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.3.

Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by the Declarant in its sole discretion.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

9.2 Architectural Review. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for construction and modifications within the Properties. There shall be no surrender of this authority prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such authority, the Board shall create and appoint an Architectural Review Committee ("ARC"). The ARC shall consist of at least three (3), but not more than five (5), Persons who shall serve and may be

removed in the Board's discretion. The ARC shall have no rights or authority until the Declarant's authority under this Article expires or is surrendered.

Notwithstanding the above, the formation of the ARC, Declarant may delegate responsibility for review of applications for approval of modifications to improved Units to a Modifications Committee ("MC") established by the Board. If so established, the MC shall consist of at least three (3), but not more than five (5), Persons who shall be appointed and shall serve at the discretion of the Board. If so delegated, the MC shall have jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space. The Declarant shall have the right to veto any action taken by the MC which the Declarant determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the Declarant. (For purposes of this Article, "Reviewing Body" shall refer to either the Declarant, the MC, or the ARC, as appropriate under the circumstances.)

The Declarant or, upon formation of the ARC, the Board, may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, ^{Unofficial Document}engineers, or other Persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget as a Common Expense.

9.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare Design Guidelines for the Properties and shall have sole and full authority to amend them as long as it owns any portion of the Properties or has a right to annex any property described on Exhibit "B." Thereafter, the ARC shall have the authority to recommend changes to the Board to the Design Guidelines. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as landscape plans and other specific provisions which vary from one portion of the Properties to another depending upon the location and unique characteristics. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewing Body and compliance with the Design Guidelines does not guarantee approval of any application.

Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the

Declarant or, upon its formation, the Board on its own or upon recommendation by the ARC, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Association shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines.

All structures and improvements constructed upon a Unit shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the appropriate committee, unless the Reviewing Body has granted a variance in writing pursuant to Section 9.5. So long as the Reviewing Body has acted in good faith; its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

(b) Procedures. No activities within the scope of Section 9.1 shall commence on any portion of the Properties until an application for approval of the proposed work has been submitted to and approved by the Reviewing Body. Such application shall be in the form required by the Reviewing Body. Such application shall be in the form required by the Reviewing Body and shall include plans and specifications ^{Unofficial Document}, showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor, and other features of proposed construction, as applicable. The Reviewing Body may require the submission of such additional information as it deems necessary to consider any application. The Plans shall be in such form and shall contain such information as may be reasonably required pursuant to the Design Guidelines.

In reviewing each submission, the Reviewing Body may consider (but shall not be limited to consideration of) the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Decisions of the Reviewing body may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as the Reviewing Bodies and their members change over time.

In the event that any application is not approved or disapproved in writing within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing pursuant to Section 9.5.

9.4 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

9.5 Variance. The Reviewing Body may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewing Body from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the MC may not authorize variances without the written consent of the Declarant or the ARC.

9.6 Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Neither the Declarant, the ^{Unofficial Document} n, the Board, the ARC or the MC shall bar any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARC or the MC or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the ARC and the MC and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.7 Enforcement. Any structure, improvement or landscaping placed or made in violation of this article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Declarant, the ARC or the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work

previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Declarant or the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Declarant, the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this article and the decisions of the Reviewing Body.

ARTICLE X

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USE RESTRICTIONS AND RULES

10.1 Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties as a master planned community in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Member's ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community and to regulate and control the Area of Common Responsibility. The Properties are subject to the land development, architectural, and design provisions described in Article IX, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

10.2 Authority to Promulgate Use Restrictions and Rules. Initial use restrictions applicable to all of the Properties are

attached as Exhibit "C" to this Declaration. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions set forth on Exhibit "C." The Board shall send notice by mail to all Owners concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Voting Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Voting Members representing at least fifty-one percent (51%) of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Voting Members to consider disapproval except upon petition of the Voting Members as required for special meetings in the By-Laws.

(b) Alternatively, the Voting Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Voting Members representing fifty-one percent (51%) of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Voting Members to modify, repeal or expand the Design Guidelines as long as the Declarant owns any portion of the Properties or has a right to annex any property described on Exhibit "B". In the event of a conflict between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

10.3 Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules may change from time to time.

10.4 Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C," neither the Board nor the Voting Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The rights of Owners and occupants to display political signs and symbols in or on their Units shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants of Units.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in residences located in single-family residential Neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that ^{Unofficial Document} the Association shall have the power to require that all occupants be members of a single housekeeping Unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(g) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

The limitations in this Section 10.4 shall apply to rules only; they shall not apply ^{Unofficial Document} to amendments to this Declaration adopted in accordance with Section 15.2.

ARTICLE XI

EASEMENTS

11.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-

governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; lakes, ponds, wetlands, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plats of the Properties.

Declarant specifically grants to the local water supplier, electric company, telephone company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits ^{Unofficial Document} "A" and "B."

(c) Any damage to an Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.3 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representative, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefitting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the

Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.4 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, the members of the Modifications Committee pursuant to Article IX, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency Personnel acting in their official capacities.

11.5 Easements for Pond Maintenance and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns, and ^{Unofficial Document} the nonexclusive right and easement, but not the obligation, to enter upon the retention ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any wall or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the retention ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

ARTICLE XII

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the

Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage related, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, which such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within sixty(60) days; or

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

12.2 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner or insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3 Notice to Association^{Unofficial Document} request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

12.4 HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the mortgage on any Unit: merger, consolidation or dissolution of the Association; annexation of additional property other than that described on Exhibit "B;" dedication, conveyance or mortgaging of Common Area; or material amendment of this Declaration.

12.5 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee with thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XIII

DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation or enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model Units, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

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No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines made after termination of the Class "B" Membership Period shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Properties primarily for development and sale.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE XIV

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

14.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party Covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association Rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 14.2, shall be resolved using the procedures set forth in Section 14.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

14.2 Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 14.3:

(a) any suit by ^{Unofficial Document} the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX (Architectural Standards) and Article X (Use Restrictions and Rules);

(c) any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of Arizona in the absence of a Claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00;

(d) any suit arising out of any written contract between Owners, or between the Declarant and any Owner or Builder, which would constitute a cause of action under the laws of the State of Arizona in the absence of the Declaration, By-Laws and Articles of the Association; and

(e) any suit in which less than all parties are Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section

14.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 14.3 shall require the approval of the Association.

14.3 Mandatory Procedures for All Other Claims. All claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including date, time, location, Persons involved, and Respondent's role in the Claim;

2. the basis of the Claim (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the Claim arises);

3. what Claimant wants Respondent to do or not do to resolve the Claim; and

4. that Claimant will meet in Person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve Unofficial Document.

(b) Negotiation.

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in Person and confer for the purpose of resolving the Claim by good faith negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation with thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, any dispute resolution center or other such independent agency providing similar services in the Phoenix, Arizona are upon which the Parties may mutually agree.

2. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of

Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person not a Party to the foregoing proceedings.

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

4. Each Party shall, within five (5) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.^{Unofficial Document}

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Arizona. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Arizona.

14.4 Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 14.3(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 14.3(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 14.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 14.4(c).

(c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

14.5 Enforcement of Resolution. After resolution of any Claim through negotiation, mediation or arbitration in accordance with Section 14.3, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 14.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (of if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, with limitation, attorneys' fees and court costs.

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ARTICLE XV

GENERAL PROVISIONS

15.1 Duration.

(a) Unless termination as provided in Section 15.1(b), this Declaration shall have perpetual duration. If Arizona law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Arizona law, in which case such law shall control, this Declaration may not be terminated within twenty (20) years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least seventy-five percent (75%)

of the total Units within the Properties and by the Declarant, if the Declarant owns any portion the Properties, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

15.2 Amendment.

(a) By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until conveyance of the first Unit to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, to make, purchase, insure or guarantee mortgage loans on the Units; (iv) to enable any reputable private insurance company to insure mortgage loans on the Units; or (v) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property dUnofficial Document in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five percent (75%) of the total Class "A" votes in the Association, including seventy-five percent (75%) of the Class "A" votes held by Members other than the Declarant, and the consent of the Declarant, so long as the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1. In addition, the approval requirements set forth in Article XII shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to taken under that clause.

(c) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any Amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

15.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provisions of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Voting Members. A Voting Member representing Units owned by Persons other than himself shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners holding seventy-five percent (75%) of the total votes attributable to Units Unofficial Document neighborhood represented by the Voting Member. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIV, if applicable.

15.5 Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and Declarations applicable to any Neighborhood, and the Association may, but shall not be required to, enforce the covenants, conditions and provisions applicable to any Neighborhood; provided, however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and Use Restrictions and Rules of the Association shall prevail over those of any Neighborhood. The foregoing priorities shall apply,

but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded Declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

15.6 Use of the Words "Mountain Vista Ranch". No Person shall use the words "Mountain Vista Ranch" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the terms "Mountain Vista Ranch" in printed or promotional matter where such term is used solely to specify that particular property is located with Mountain Vista Ranch and the Association shall be entitled to use the words "Mountain Vista Ranch" in its name.

15.7 Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, any applicable Supplemental Declaration, the By-Laws, and the Use Restrictions and Rules promulgated pursuant to Article X. Subject to the terms of Article XIV, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted Unofficial Document Association in Section 4.3.

15.8 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer or title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer or title.

15.9 Exhibits. Exhibits "A", "B" and "D" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 15.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

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

MOUNTAIN VISTA RANCH, L.L.C. (f/k/a HW, L.L.C.), an Arizona limited liability company

BY: Harvard Investemnts, Inc., a Nevada corporation Its Manager

By: [Signature]
Craig Krumwiede
Its: President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

THE FOREGOING INSTRUMENT was acknowledged before me this 12th day of August, 1996 by Unofficial Document wiede, President, of Harvard Investments, Inc, a Nevada corporation as Manager of MOUNTAIN VISTA RANCH, L.L.C., an Arizona limited liability company, on behalf of said company.

[Signature]
NOTARY PUBLIC

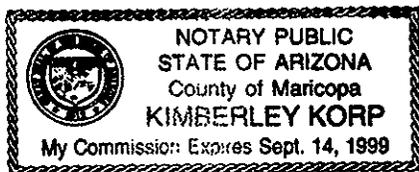


EXHIBIT "A"

ALL OF PARCEL 7 IS TO BE ASSIGNED TO A NEWLY CREATED
NEIGHBORHOOD NAMED MOUNTAIN VISTA RANCH,
PARCEL 7 NEIGHBORHOOD

LEGAL DESCRIPTION
MOUNTAIN VISTA RANCH
PARCEL 7

A PORTION OF THE NORTH HALF OF SECTION 6, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE
GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 6;

THENCE SOUTH 89°34'18" EAST, ALONG THE EAST-WEST MID-SECTION LINE OF SAID SECTION 6,
A DISTANCE OF 1203.23 FEET TO A POINT FROM WHICH THE EAST QUARTER CORNER OF SAID
SECTION 6 BEARS SOUTH 89°34'18" EAST A DISTANCE OF 3496.95 FEET;

THENCE NORTH 00°25'42" EAST, A DISTANCE OF 17.96 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 00°30'46" EAST, A DISTANCE OF 172.65 FEET TO THE BEGINNING OF A TANGENT
CURVE CONCAVE SOUTHEASTERLY WHICH HAS A RADIUS OF 1175.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 67°35'43" AN
ARC DISTANCE OF 1386.22 FEET;

THENCE SOUTH 21°53'31" EAST, ALONG A LINE THAT IS RADIAL TO THE PREVIOUSLY
DESCRIBED CURVE, A DISTANCE OF 60.00 FEET TO A POINT ON A CURVE CONCAVE
SOUTHEASTERLY FROM WHICH THE RADIUS BEARS SOUTH 21°53'31" EAST, A DISTANCE OF
1115.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°36'42" AN
ARC DISTANCE OF 225.97 FEET TO A POINT OF NON-TANGENCY;

THENCE EAST A DISTANCE OF 266.08 FEET;

THENCE NORTH 58°59'02" EAST, A DISTANCE OF 24.66 FEET TO THE BEGINNING OF A NON-
TANGENT CURVE CONCAVE SOUTHERLY FROM WHICH THE RADIUS BEARS SOUTH 58°59'57"
EAST A DISTANCE OF 160.00 FEET;

THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG SAID CURVE THROUGH A
CENTRAL ANGLE OF 119°53'32" AN ARC DISTANCE OF 334.80 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 29°06'25" EAST, A DISTANCE OF 31.18 FEET TO A POINT ON A CURVE CONCAVE
SOUTHERLY FROM WHICH THE RADIUS BEARS SOUTH 24°57'00" EAST, A DISTANCE OF 165.00
FEET;

MOUNTAIN VISTA RANCH PARCEL 7

THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 32°55'16" AN ARC DISTANCE OF 94.81 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 82°01'44" EAST, A DISTANCE OF 34.20 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY WHICH HAS A RADIUS OF 126.46 FEET;

THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22°47'26" AN ARC DISTANCE OF 50.30 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY FROM WHICH THE RADIUS BEARS SOUTH 32°34'05" WEST, A DISTANCE OF 204.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51°09'16" AN ARC DISTANCE OF 182.13 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY WHICH HAS A RADIUS OF 111.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48°34'08" AN ARC DISTANCE OF 94.09 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 54°50'47" EAST, A DISTANCE OF 60.43 FEET;

THENCE NORTH 88°47'43" EAST, A DISTANCE OF 35.42 FEET;

THENCE SOUTH 60°36'39" EAST, A DISTANCE OF 51.14 FEET TO A POINT ON A CURVE CONCAVE SOUTHEASTERLY FROM WHICH THE RADIUS BEARS SOUTH 60°36'39" EAST, A DISTANCE OF 784.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°32'31" AN ARC DISTANCE OF 62.15 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY WHICH HAS A RADIUS OF 30.00 FEET;

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THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 82°01'40" AN ARC DISTANCE OF 42.95 FEET TO A POINT OF CUSP WITH A CURVE CONCAVE NORTHEASTERLY FROM WHICH THE RADIUS BEARS NORTH 41°54'12" EAST, A DISTANCE OF 754.86 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°08'54" AN ARC DISTANCE OF 67.83 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 53°14'42" EAST, A DISTANCE OF 557.41 FEET;

THENCE SOUTH 36°45'18" WEST, A DISTANCE OF 32.87 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY WHICH HAS A RADIUS OF 38.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34°21'30" AN ARC DISTANCE OF 22.79 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY WHICH HAS A RADIUS OF 106.33 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°34'22" AN ARC DISTANCE OF 103.13 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY WHICH HAS A RADIUS OF 55.54 FEET;

MOUNTAIN VISTA RANCH PARCEL 7

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THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81°59'53" AN ARC DISTANCE OF 79.49 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE EASTERLY WHICH HAS A RADIUS OF 138.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 91°33'16" AN ARC DISTANCE OF 220.51 FEET TO A POINT OF CUSP WITH A CURVE CONCAVE SOUTHWESTERLY FROM WHICH THE RADIUS BEARS SOUTH 27°16'03" WEST, A DISTANCE OF 774.22 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°56'14" AN ARC DISTANCE OF 93.74 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY WHICH HAS A RADIUS OF 220.00 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 10°54'25" AN ARC DISTANCE OF 41.88 FEET TO A POINT OF NON-TANGENCY;

THENCE SOUTH 61°03'27" WEST, A DISTANCE OF 141.54 FEET;

THENCE SOUTH 37°04'58" WEST, A DISTANCE OF 101.38 FEET;

THENCE SOUTH 69°06'57" WEST, A DISTANCE OF 67.00 FEET;

THENCE SOUTH 88°39'20" WEST, A DISTANCE OF 65.00 FEET;

THENCE SOUTH 89°47'43 WEST, A DISTANCE OF 640.03 FEET;

THENCE NORTH 00°26'31" EAST, A DISTANCE OF 229.34 FEET;

THENCE SOUTH 89°58'27" WEST, A DISTANCE OF ^{Unofficial Document} 208.15 FEET;

THENCE SOUTH 01°19'38" EAST, A DISTANCE OF 228.01 FEET;

THENCE NORTH 89°42'24" WEST, A DISTANCE OF 863.48 FEET TO THE TRUE POINT OF BEGINNING.

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EXHIBIT "C"

Initial Use Restrictions and Rules

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article X of the Declaration.

RESIDENTIAL RESTRICTIONS

1. General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association, or business offices for the Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.
2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:
 - (a) Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored ^{Unofficial Document} vehicles or inoperable vehicles in places other than enclosed garages; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;
 - (b) Raising, breeding or keeping of animals, livestock or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;
 - (c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;
 - (d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no

obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the common area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, detention pond, or elsewhere within the Properties, ^{Unofficial Document} except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Public Records, except that the Declarant shall be permitted to subdivide or replat Units which it owns;

(n) Swimming, use of personal flotation devices, or other active use of detention ponds or other bodies of water with

the Properties. Declarant, its successors and assigns, shall be permitted and shall have the exclusive right and easement to draw water from detention ponds within the Properties for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of detention ponds, or other bodies of water within or adjacent to the Properties;

(o) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank approved by the Declarant;

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(r) No business activities of any kind shall be conducted on any lot or portion of the premises; provided, however, the foregoing covenants shall not apply to the business activities of the Declarant, or its agents and assigns, during the construction and sale period, or to such activities of the Architectural Committee, its successors and assigns, in the furtherance of its powers and purposes, as herein set forth. Notwithstanding the foregoing and subject to the ordinances of the City of Surprise, an Owner or occupant may have a home office within a Building on a Lot, provided that he or she first obtains written approval of Architectural Committee to maintain such home office. Such approval shall be conditioned upon the following restrictions:

(i) The business shall be carried on by a Member or members of the family of the family residing in the residence.

(ii) The business shall clearly be incidental and secondary to the use of the dwelling for residential purposes and occupies no more than twenty-five percent (25%) of the usable area within the dwelling.

(iii) No one other than the resident(s) of the dwelling shall be employed in the business at the dwelling.

(iv) There shall be no exterior display, signage, storage or other indication of the home office or variation from the residential character of the dwelling.

(v) The activity shall be limited to the hours between 7:00 A.M. and 9:00 P.M.

(vi) No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced and the business does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property as determined by the Committee.

(vii) The street address of the home office shall not be included in any off-site signage, advertising or printed materials.

(viii) The business shall comply in all respects with applicable laws, regulations and ordinances of the United States, State of Arizona, City of Surprise and other applicable governmental entities.

(xiv) Such other restrictions or limitations as are determined by the Architectural Committee.

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The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection.

(s) Capturing, trapping or killing of wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons using the Properties;

(t) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(u) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without the prior approval of the appropriate committee pursuant to Article IX;

(v) Operation of motorized vehicles on pathways or trails maintained by the Association; and

(w) Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IX of the

Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; antennas, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; and hedges, walls, dog runs, animal pens, or fences of any kind.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair; and

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties, except that Declarant and the Association shall have the right to draw water from such sources.

4. Leasing of Units. ^{Unofficial Document} "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term, which requirements may vary from the Neighborhood to Neighborhood. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Use Restrictions and Rules.

EXHIBIT "D"

Rules of Arbitration

IA1. Claimant shall submit a Claim to arbitration under these Rules giving written notice to all other Parties stating plainly and concisely the nature of the claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").

IA2. Each Party shall select an arbitrator ("Party Appointed Arbitrator"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("Neutral(s)") so that the total arbitration panel ("Panel") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within twenty (20) days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson ("Chair").

IA3. If the Panel is not selected under Rule 2 within forty-five (45) days from the date of the Arbitration Notice, Claimant may notify the Arizona chapter of The Community associations Institute, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. ^{Unofficial Document} The Appointed Neutral shall thereafter be the sole arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

IA4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.

IA5. The Arbitrator or Chair, as the case may be ("Arbitrator"), shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties.

IA6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

IA7. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

IA8. There shall be no stenographic record of the proceedings.

IA9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

IA10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

IA11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

IA12. There will be no posthearing briefs.

IA13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than fourteen (14) days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and Unofficial Document signed before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

IA14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

IA15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

EXHIBIT "E"

NOTICE OF CONSENTS
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MOUNTAIN VISTA RANCH

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