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MONTEREY HOMES CONSTRUCTION
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TUCSON AZ 85741



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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MADERA HIGHLANDS

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MADERA HIGHLANDS

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and entered into as of the 27 day of May, 2005, by Monterey Homes Arizona, Inc., an Arizona corporation (the "Declarant") and by Lancelot Madera, LLC, an Arizona limited liability company ("Lancelot") which has executed the Consent attached hereto.

[illegible]

This Declaration provides for an extensive degree of control by Declarant including, but not limited to, (i) control of the Association, the type, design and location of improvements that may be built upon the Property, and the use, and limitations upon use, of the Common Areas; (ii) substantial flexibility in developing the Property; and (iii) substantial flexibility in subjecting additional property to this Declaration. Section 22 hereof contains a limitation on the liability of Declarant and Related Entities. Each Owner, by accepting title to any portion of the Property, and each other Person acquiring any other interest in the Property, acknowledges, agrees to and accepts Declarant's control of the Property and the limited liability of Declarant and Related Entities as provided in this Declaration. Declarant's control is an integral part of this Declaration and the general scheme of development and operation of the Property. Capitalized terms used in this paragraph are defined in this Declaration.

[illegible]

RECITALS.

Defined terms appear throughout this Declaration with the first letter of each word in the term capitalized. Unless the context clearly requires otherwise, defined terms shall have the meanings given to them in this Declaration.

- A. Declarant and Lancelot are the record owners of the real property situated in the Town of Sahuarita (the "Town"), in Pima County, Arizona (the "County"), described on Exhibit "A" (the "Covered Property"). Exhibit "A" is made a part of this Declaration by this reference.
- B. The Covered Property has been planned and zoned as an integrated development, which is sometimes referred to as the "Project" in this Declaration.
- C. At full development, the Project may have one or more recreational facilities, open spaces, walkways, and social, civic, cultural and other buildings and facilities, but neither Declarant, nor any other Person, is under any obligation to develop all or any such improvements and facilities or to annex all or any portion of the "Annexable Property." Unless and until the

Annexable Property is annexed (and thereby subjected to this Declaration) it shall not be subject to or affected by any of the terms, conditions, or other provisions of this Declaration.

D. As part of the various stages of development of the Project, Declarant intends, but is not obligated, to (i) record or cause or permit to be recorded, various subdivision plats; (ii) dedicate portions of the Project to the public or otherwise for streets, roadways, drainage, flood control, parks, and general public use; and (iii) establish a system of private roadways within the Project. As part of the various stages of development of the Project, Declarant also intends to record, or cause to be recorded, various "Tract Declarations" as more particularly described herein.

E. Declarant desires to form a nonprofit corporation (the "Association") to be an owner's association for the Property, to own and operate Common Areas, to manage the Property, and for other purposes benefiting the Property, the Owners and Occupants, and any other Person acquiring an interest in the Property.

F. The Association has been or will be incorporated under the laws of the State of Arizona, and Declarant may, but is not obligated to, seek approval of the Association by any governmental agencies or financial institutions whose approval Declarant deems necessary or desirable.

G. To accomplish the purposes described above, to establish a general plan for the improvement, ownership, and development of the Property, to enhance and protect the value, desirability and attractiveness of the Property and the Project, and to enhance the quality of life within the Property, Declarant desires to submit and subject the Property (but no portion of the Annexable Property unless and until it is annexed), together with all buildings, improvements structures, and other permanent fixtures of whatever kind located upon the Property now or at any time in the future, to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, easements, privileges, and rights contained in this Declaration.

H. Declarant may (with the consent of the record owner if Declarant is not then the record owner), but is not required to, annex additional real property (which may include all or any parts of the Annexable Property) to this Declaration. Any annexed land shall, upon the effective date of the annexation, become subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements contained in this Declaration and shall be subject to the jurisdiction as the Association. Any portion of the Project that is not a part of the Covered Property and is not annexed as provided herein is not subject to this Declaration.

DECLARATIONS.

NOW, THEREFORE, for the purposes set forth above, Declarant declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, easements, privileges, and rights set forth in this Declaration, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of Trustee and Declarant, any

Related Entity, the Association, and every other owner of any interest in the Property or any part thereof, including, but not limited to, each Owner of a Lot or Parcel.

1. DEFINITIONS.

The following terms used in this Declaration are defined as follows:

- 1.1 "Annexable Property". The real property described on Exhibit "B" and any additional real property within one-quarter mile of the perimeter boundaries of the Covered Property or the Annexable Property.
- 1.2 "Architectural Design Guidelines". Defined in Section 13.2.
- 1.3 "Architectural Review Committee". The committee created pursuant to Section 13.
- 1.4 "Area of Common Responsibility". Any area that is not owned by the Association (and is therefore not part of the Common Areas) but for which the Association has maintenance, repair, and/or operational responsibility by terms of this Declaration or other applicable real property covenants, by requirements of governmental authorities, or by contract. Any area described in the preceding sentence shall continue to be an Area of Common Responsibility only so long as the Association's responsibility for it continues.
- 1.5 "Articles". The Articles of Incorporation of the Association, as they may be amended from time to time.
- 1.6 "Assessment Lien". The lien created and imposed by Section 7.1.
- 1.7 "Assessments". All of the charges denominated "Assessments" in this Declaration including, but not limited to, Base Assessments, Benefited Assessments, Village Assessments, Capital Improvement Assessments, and Reconstruction Assessments.
- 1.8 "Association". The Madera Highlands Owners Association, an Arizona nonprofit corporation, its successors and assigns (or a similarly named entity if, for any reason, the designated name at any time is unavailable for use with the Property).
- 1.9 "Association Rules". The rules and regulations adopted by the Board pursuant to Section 5.4, as those rules and regulations may be amended from time to time.
- 1.10 "Base Assessment". Defined in Section 7.4.
- 1.11 "Benefited Assessment". Any assessment provided for in Section 0.
- 1.12 "Board". The Board of Directors of the Association.
- 1.13 "Business Use". To be construed to have its ordinary, generally accepted meaning and shall include any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to Persons other than the provider's family and for

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1.15 “Capital Improvement Assessment”. Defined in Section 7.8.

1.17 "Class B Member". Declarant prior to the Transition Date, and "Class B Membership" means each Membership owned by Declarant prior to the Transition Date.

1.19 "Common Expenses". The costs incurred or anticipated by the Association in conducting its operations and activities and in satisfying its obligations, including, but not limited to, the following:

1.19.2 Unpaid Assessments. Unpaid Assessments (but not unpaid Village Assessments):

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provided for in this Declaration or pursuant to agreements with the Town, the County or neighboring land-owners);

1.19.4 Management. The costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, and employees;

1.19.5 Utilities. The costs of utilities and services (including, but not limited to, water, electricity, gas, sewer, trash pick-up and disposal, and cable TV and related services) that are provided to the Association or the Common Areas or the Areas of Common Responsibility, or are provided to Owners pursuant to Section 5.18 by a designated service provider as a basic level of service, and landscaping maintenance, and other services that generally benefit and enhance the value and desirability of the Property or the Project and that are provided by the Association;

1.19.6 Insurance. The costs of insurance maintained by the Association;

1.19.7 Reserves. Reasonable reserves for contingencies, replacements, and other proper purposes, deemed appropriate by the Board to meet anticipated costs and expenses including, but not limited to, maintenance, repairs, and replacement of those Common Areas and any Areas of Common Responsibility that must be maintained, repaired, or replaced on a periodic basis;

1.19.8 Bonds. The costs that the Board may elect to incur to bond the members of the Board, officers of the Association, any professional managing agent, or any other Person handling the funds of the Association;

1.19.9 Taxes. Taxes paid by the Association;

1.19.10 Encumbrances. Amounts paid by the Association for discharge of any lien or encumbrance levied against any portion of the Common Areas or the Association's interest in any Areas of Common Responsibility;

1.19.11 Architectural Review. The costs incurred by the Architectural Review Committee;

1.19.12 Committee Expenses. The costs incurred by any other committees established by the Board;

1.19.13 Patrol Services. The costs of any patrol or similar services including, but not limited to, any patrol officers and/or access control gates, other than those included in Village expenses or chargeable to individual Lots and Owners as a Benefited Assessment;

1.19.14 Well-Being. The costs of, or the subsidization of, recreation, cultural, health-related, or similar facilities or enterprises available to or for the benefit of all (or substantially all) Owners; and

1.19.15 Other. Other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas or any Areas of Common Responsibility, or the costs of any other item or items designated by, or to be provided or performed by the Association pursuant to, this Declaration, the Articles, Bylaws, Association Rules, or Architectural Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association. If any common services furnished to the Property are part of services that are provided to or benefit property in addition to the Property (such as, by way of illustration and not limitation, patrol services furnished to the Property and other areas of the Project which are not subject to this Declaration), Common Expenses shall only include the cost of such services reasonably allocated to the services provided to the Property.

1.20 "Conservancy". Defined in Section 17.1.

1.21 "Conservancy Payment". Defined in Section 17.1.

1.22 "County". Pima County, a political subdivision of the State of Arizona.

1.23 "Covered Property". That certain real property described on Exhibit "A."

1.24 "Declarant". Monterey Homes Arizona, Inc., an Arizona corporation; its successors and assigns; any Person to whom Declarant's rights under this Declaration are assigned in whole or in part by recorded instrument; or any Mortgagee of Declarant that acquires title to or succeeds to the interest of Declarant in any portion of the Property by reason of a foreclosure (or conveyance in lieu of foreclosure) or trustee's sale under the Mortgage. The term "Declarant", as used in this Declaration, shall include not only the named Declarant but also any of the Declarant's successors, assigns, assignees of right(s), and any Mortgagee of Declarant that acquires title to or succeeds to the interest of Declarant. An assignment by recorded instrument of all of Declarant's rights shall vest in the assignee all of Declarant's rights under this Declaration (including, but not limited to, all of Declarant's easements, rights of consent or approval, and voting rights) on the same terms that they were held by Declarant under this Declaration. An assignment by recorded instrument of part of Declarant's rights shall vest in the assignee the specific Declarant's right(s) named in the instrument of assignment on the same terms that they were held by Declarant under this Declaration but shall not diminish the rights held by Declarant unless the instrument of assignment expressly so states. Notwithstanding anything to the contrary in this Declaration, an assignment of all or any portion of Declarant's rights shall not deprive the assignor of any protection, indemnity, or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of the Declarant's rights hereunder.

1.25 "Declaration". This instrument and any supplements to it, as this Declaration and any supplements to this Declaration may be amended from time to time.

1.26 "Default Rate of Interest". An annual rate of interest equal to the greater of (i) 15% per annum or (ii) 4% plus the prime rate announced by Bank One, Arizona, NA (and charged to its largest and most creditworthy customers). The Default Rate of Interest shall be adjusted as and when the announced prime rate is adjusted. Therefore, if, during any periods

while interest is accruing, the announced prime rate plus 4% per annum is less than 15%, interest shall accrue during those periods at 15% per annum. Notwithstanding anything in this Declaration to the contrary, if, during any periods, the highest lawful rate of interest that may be paid by the Person required to pay the Default Rate of Interest, despite the provisions of this Declaration, is less than the rate provided above, then the interest payable by the Person during those periods shall be the highest lawful rate. If Bank One, Arizona, NA should cease doing business or no longer announce its prime rate as described above, the Board may compute interest based upon the announced prime rate of any other bank doing business in Pima County, Arizona. If banks should cease announcing prime rates, the Board may elect to use 15% as the Default Rate of Interest, or may specify the rate, in lieu of the prime rate, for purposes of the computation hereunder that the Association would reasonably have to pay to borrow money at the time.

1.27 "Designee". Defined in Section 6.6.

1.28 "Developer Owner". An Owner (other than Declarant) in the business of developing, leasing and/or selling real property who has acquired one or more Lots or Parcels in connection with, and in the course of, such business, for the purpose of developing, leasing, or selling its Lots or Parcels, and who is given this designation by Declarant in a recorded instrument. In any recorded instrument naming a Developer Owner, Declarant shall have the right to grant all or any of the special rights, privileges, obligations and exemptions of Declarant pursuant to this Declaration, any applicable Supplemental Declaration or Tract Declaration, the Association Rules and the Design Review Guidelines to a Developer Owner, and each recorded instrument naming a Developer Owner shall specify which of the Declarant's special rights, privileges, obligations and exemptions are being granted to that Developer Owner. The granting of all or any of the special rights, privileges, obligations and exemptions of Declarant to a Developer Owner pursuant to the foregoing sentence shall not diminish or otherwise alter the application of those special rights, privileges, obligations and exemptions to Declarant.

1.29 "Dwelling Unit". Any building or portion of a building situated upon a Lot or Parcel designed and intended for use and occupancy as a residence by a Single Family.

1.30 "Eligible Holder". A First Mortgagee or an insurer or guarantor of a First Mortgage that provides the Association with a written request containing the name and address of the First Mortgagee or the insurer or guarantor of the First Mortgage and the street address or legal description of the Lot or Parcel that is encumbered by the First Mortgage.

1.31 "Exempt Property". The following parts of the Property:

1.31.1 Governmental. All land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, the County, the Town, or any political subdivision of any of them, for as long as that entity or political subdivision is the owner of the land and improvements or for so long as the dedication remains effective;

1.31.2 Common. All Common Areas and all Village Common Areas, for as long as the Association is the owner or lessee of them;

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1.31.3 Utility. All land and improvements owned or leased by a provider of utility services.

1.32 "First Mortgage". A Mortgage that is the first and most senior of all Mortgages upon the same property.

1.33 "First Mortgagee". The holder of a First Mortgage.

1.34 "Insurance Trustee". Defined in Section 11.5.

1.35 "Land Use Classification". The classification to be established by a Tract Declaration (recorded pursuant to Section 4.1) that designates the types of improvements that may be constructed on a portion of the Property described in the Tract Declaration and the purposes for which those improvements and that portion of the Property may be used.

1.36 "Lot". Any area of the Property that is shown as a subdivided lot on a subdivision plat recorded by or with the consent of Declarant and that is limited by a Tract Declaration to Single Family Residential Use or Cluster Residential Use (or any other comparable residential use authorized by Declarant pursuant to Section 4.1 hereof). Notwithstanding anything to the contrary herein, if a portion of the Property shown as a "Lot" on a Plat is owned by the Association and used for open space, or other purposes generally benefiting Owners, it shall be considered part of the "Common Areas" (as that term is defined herein) notwithstanding its designation on the plat.

1.37 "Majority of Members". More than 50% of the total votes entitled to be cast by Members (including Declarant so long as Declarant or any Related Entity Owner owns any portion of the Property).

1.37.1 Fraction. Any specified fraction or percentage "of the Members" (or any Class of Members) means that fraction or percentage of the total votes entitled to be cast by Members, or by the Class of Members (including Declarant so long as Declarant or any Related Entity Owner owns any property subject to this Declaration in fee or beneficially).

1.37.2 Majority. A "majority of a quorum of Members" means more than 50% of the total votes entitled to be cast by the Members who are present (in person or by proxy) at a meeting at which a quorum of Members (as defined in the Bylaws) is present.

1.37.3 General Requirement. Unless otherwise specified, any provision of this Declaration requiring the approval of the Members means the approval of a majority of a quorum of Members.

1.38 "Member". Every Person who is a member of the Association.

1.39 "Membership". A membership in the Association.

1.40 "Mortgage". Any recorded, filed or otherwise perfected instrument that is: (i) not a fraudulent conveyance under Arizona or federal law; and (ii) given in good faith and for valuable consideration as security for the performance of an obligation including, but not limited

to, a deed of trust; and (iii) not an instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.41 "Mortgagee". The holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

1.42 "Mortgagor". The obligor under a Mortgage.

1.43 "Occupant". Any Person, other than an Owner, in rightful possession of any portion of the Property, whether as a guest, tenant, or otherwise.

1.44 "Owner". The record owner of fee simple title to any real property that is a part of the Property. The term "Owner" includes all Persons holding title to a portion of the Property, even if there is more than one, and includes contract purchasers and optionees under option agreements, and beneficiaries under trust agreements but excludes those having an interest merely as security for the performance of an obligation. Declarant shall be considered the Owner of any real property which (a) is subjected to this Declaration and (b) is subject to an option agreement under which Declarant is the Optionee.

1.45 "Parcel". An area of the Property that is restricted by a Tract Declaration but that has not been subdivided into Lots by a subdivision plat or other recorded instrument creating Lots and related amenities, and rights-of-way. Any area of land within the Property shall cease to be a Parcel upon the recordation of a subdivision plat or other instrument covering the area and creating Lots, related amenities, and rights-of-way. A Parcel shall not include a Lot or any Exempt Property. In the case of staged developments, the term "Parcel" shall include areas not yet included in a subdivision plat or other recorded instrument creating Lots, related amenities, and rights-of-way.

1.46 "Person". An individual, corporation, partnership, limited liability company, trustee, or other entity capable of holding title to real property under Arizona law.

1.47 "Preserve Land". Defined in Section 17.1.

1.48 "President". The duly elected or appointed president of the Association.

1.49 "Private Road". Any street, roadway, drive, or other similar right-of-way within or partly within the Property that has not expressly been dedicated to public use. These terms do not include any right-of-way that is within any Village Common Area unless otherwise provided in the Tract Declaration applicable to the Village.

1.50 "Project". Defined in the Recitals.

1.51 "Property". The Covered Property and any additional real property made subject to this Declaration by annexation pursuant to Section 18 (but only after completion of the annexation) together with all buildings, improvements, structures, and other permanent fixtures of whatever kind located upon the Property now or at any time in the future, and all easements, rights, appurtenances, and privileges belonging or in any way pertaining to the Property.

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1.52 "Reconstruction Assessment". Defined in Section 11.2.

1.53 "Related Entity". Any member, or any officer, director, shareholder, principal, or similar Person holding an interest or position in Declarant, or a member of Declarant, or an entity controlled by or under common control with Declarant or a member of Declarant or any land banker that owns Lots or Parcels and grants Declarant an option or other right to purchase such Lots or Parcels.

1.54 "Related Entity Owner". Any Related Entity to whom any portion of the Property is transferred.

1.55 "Retail Purchaser". A Person that purchases a Lot or Parcel in a retail transaction and shall not include Declarant, any Related Entity, any Related Entity Owner, a Developer Owner, a Village Builder, or any other Person who acquired the Lot or Parcel (i) solely for the purpose of development and resale in one or a series of retail transactions, (ii) by distribution (as distinguished from purchase), (iii) in any similar transaction. A Retail Purchaser shall not include any land banker that takes title to Lots or Parcels and grants Declarant, a Developer Owner or a Village Builder the right to purchase such Lots or Parcels.

1.56 "Single Family". One individual or a group of individuals, each related to the other by blood, marriage, or legal adoption or a group of not more than three persons not all so related, who maintain a common household in a Dwelling Unit.

1.57 "Special Use Fees". Special fees that an Owner, an Occupant, or any other Person is obligated by this Declaration, by a Supplemental Declaration or Tract Declaration, or by the Association Rules to pay to the Association for use of, access to, or for the granting of a right or privilege with respect to, an amenity, facility, or other improvement, including, but not limited to, any Common Area or Area of Common Responsibility. Special Use Fees shall be in addition to any Assessment hereunder.

1.58 "Supplemental Declaration". A declaration or similar instrument that annexes additional real property to the Property and subjects the real property so annexed to this Declaration.

1.59 "Taking". Defined in Section 12.1.

1.60 "Town". The Town of Sahuarita, Arizona, a municipal corporation of the State of Arizona.

1.61 "Tract Declaration". Defined in Section 4.4.

1.62 "Transition Date". The first to occur of the following:

1.62.1 Lapse of Ownership. The date which is 90 days following the date when Declarant is no longer the Owner of or has the right to purchase any portion of the Project or the Annexable Property; or

1.62.2 Voluntary Conversion. The date on which Declarant gives written notice to the Board that Declarant is relinquishing its Class B Memberships and converting them to Class A Memberships.

1.63 "Village". The entire area within the Property subject to a single Tract Declaration. If a single Tract Declaration is intended to apply to more than one Village, the term "Village" shall mean the portion of the Property designated by the Tract Declaration to be a separate Village. The Plats submitted to the Town do not identify Villages but, rather, identify blocks and it is anticipated that such blocks may constitute Villages under this Declaration.

1.64 "Village Assessment". Defined in Section 7.7.

1.65 "Village Builder". A Person (other than a Developer Owner) that is or is expected to be the principal developer in a Village and is given this designation by Declarant in a recorded instrument. In any recorded instrument naming a Village Builder, Declarant shall have the right to grant any of the special rights, privileges, obligations and exemptions of Declarant pursuant to this Declaration, any applicable Supplemental Declaration or Tract Declaration, the Association Rules and the Design Review Guidelines to a Village Builder, and each recorded instrument naming a Village Builder shall specify which of the Declarant's special rights, privileges, obligations and exemptions are being granted to that Village Builder. The granting of special rights, privileges, obligations and exemptions of Declarant to a Village Builder pursuant to the foregoing sentence shall not diminish or otherwise alter the application of those special rights, privileges, obligations and exemptions to Declarant.

1.66 "Village Common Area". Those Common Areas within any Village that are intended predominantly or exclusively for the general benefit of the Owners or Occupants of property in that Village, such as Private Roads, access control gates at the entrances to the Village, community swimming pools, development landscaping, perimeter walls of the Village, and other areas not designed for use with a single Dwelling Unit within the Village or designed for the general benefit of all Owners and Occupants of the Property. Village Common Areas may be designated in a recorded Tract Declaration or by another instrument by or with the consent of Declarant.

1.67 "Village Expenses". The costs incurred or anticipated by the Association in conducting activities that benefit a particular Village, including, but not limited to, the following:

1.67.1 Common Areas. The costs of any maintenance, management, operation, repair, and replacement of the Village Common Areas, including any Private Roads within the Village; and

1.67.2 Assessments. Unpaid Village Assessments.

1.68 "Visible from Neighboring Property". With respect to any given object, that it is visible to an individual six feet tall (without artificial vision enhancement devices), standing on any part of the Property at an elevation no greater than ground level where the object is located.

2. PROPERTY SUBJECT TO DECLARATION.

2.1 General Purpose. Declarant intends that the Project will be subdivided and developed by subdivision and otherwise into various Villages, Lots, Parcels and Common Areas. All of the real property within the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon, or otherwise used, improved, and transferred subject to this Declaration, and any applicable recorded Supplemental Declarations and Tract Declarations, as all of them may be amended or modified from time to time. However, property that is Exempt Property and that is dedicated to the public or a governmental entity shall not be subject to this Declaration while it is thus dedicated, although restrictions imposed in this Declaration upon the Owners and Occupants concerning the use and maintenance of those areas shall at all times apply to the Owners and Occupants. This Declaration, the Tract Declarations, and any Supplemental Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale of the Property and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property and the Project and every part thereof. This Declaration shall be binding upon and inure to the benefit of Declarant, any Related Entities, the Association, all Developer Owners, all Village Builders, all Owners and Occupants, and all of their successors in interest. NOTHING IN THIS DECLARATION SHALL BE CONSTRUED TO PREVENT DECLARANT FROM (A) MODIFYING PLANS FOR PORTIONS OF THE PROJECT NOT INCLUDED IN THE PROPERTY OR ANY PORTIONS OF THE PROPERTY FOR WHICH A TRACT DECLARATION HAS NOT BEEN RECORDED, (B) DEDICATING OR CONVEYING PORTIONS OF THE PROJECT OWNED BY DECLARANT, FOR STREETS OR ROADWAYS AND/OR FOR USES OTHER THAN AS A LOT, PARCEL, VILLAGE, COMMON AREA, OR VILLAGE COMMON AREA, (C) DETERMINING NOT TO ANNEX ALL OR ANY PORTION OF THE ANNEXABLE PROPERTY, OR (D) MODIFYING THE PLANS OR ANY PORTIONS THEREOF AS TO WHICH A TRACT DECLARATION HAS BEEN RECORDED IF NO PORTION OF THE PROPERTY DESCRIBED IN THE TRACT DECLARATION HAS BEEN CONVEYED BY DECLARANT TO ANOTHER PERSON.

2.2 Association Bound. Upon the incorporation of the Association, this Declaration shall be binding upon and shall benefit the Association and its Members.

3. RIGHTS OF ENJOYMENT.

3.1 Right of Enjoyment. Every Owner and Occupant shall have a nonexclusive easement (appurtenant to the Owner's Lot or Parcel) to use and enjoy the Common Areas, subject to all of the easements, covenants, conditions, restrictions, and other provisions contained in this Declaration, including, but not limited to, the following:

3.1.1 Limit Number and Uses. The right of the Board to impose reasonable limits on the number of guests of Owners and Occupants and to impose reasonable limits on the use of the Common Areas and Village Common Areas by Persons who are not Owners, and to charge admission, membership, and other Special Use Fees for the use of any Common Areas and/or Village Common Areas when all or any portion of the costs of ownership, operation, maintenance, and repair of such facilities should, in the opinion of the Board, be borne (in whole or in substantial part) by users rather than by all Members of the Association;

3.1.2 Rules. The right of the Board to establish reasonable rules and regulations, not inconsistent with this Declaration, pertaining to or restricting the use of the Common Areas and Village Common Areas by Owners, Occupants, or other Persons;

3.1.3 Borrowing. The right of the Board to borrow money for the purpose of improving, replacing, restoring, or expanding the Common Areas and Village Common Areas or adding new Common Areas and Village Common Areas and, in aid thereof, to mortgage the Common Areas or Village Common Areas, provided that the rights of the lender shall be subordinated to the rights of the Owners;

3.1.4 Suspension. The right of the Board to suspend the right of an Owner, Occupant, or any other Person (including, but not limited to, a member of the family of an Owner) to use the Common Areas and Village Common Areas or any designated portion of the Common Areas or Village Common Areas (and to suspend the Owner's voting rights) during any period in which any Assessment applicable to that Owner or that Owner's Lot or Parcel remains unpaid and delinquent, or for any infraction of the Association Rules or breach of this Declaration, all in accordance with the provisions of this Declaration and any applicable provisions of any Supplemental Declaration, Tract Declaration, the Bylaws and Association Rules. Notwithstanding the foregoing, the Board shall not have the right to limit or suspend any Owner's rights to such an extent that the Owner is denied access to its Lot or Parcel;

3.1.5 Dedications. The right of the Board to dedicate or transfer all or any part of, or interest in, the Common Areas or Village Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board; and

3.1.6 Alter Boundaries. The right of the Board to change the use, size, shape or location of Common Areas and Village Common Areas, to exchange Common Areas or Village Common Areas for other properties that then become Common Areas, and to abandon or otherwise transfer Common Areas or Village Common Areas.

3.2 Delegation of Use. No Owner may delegate the Owner's right to use and enjoy the Common Areas or Village Common Areas to any Person except to the members of the Owner's immediate family, to Occupants of the Owner's Lot or Parcel, or to the Owner's invitees, in each case as permitted by the Association Rules.

3.3 Waiver of Use. No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments and no Owner may release any Lot or Parcel that he owns from the liens, charges and other provisions of this Declaration, any applicable Supplemental Declaration or Tract Declaration, the Articles, Bylaws, Association Rules, or Architectural Design Guidelines, by voluntary waiver of (or suspension or restriction of) the Owner's right to use and enjoy the Common Areas, or by the abandonment of the Owner's Lot or Parcel.

4. LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS.

4.1 Land Use Classifications. As portions of the Property are readied for development, the Land Use Classifications, restrictions, easements, rights of way, and other matters, including new or different uses and restrictions therefore and including any number of

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subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration that is recorded for that portion of the Property. A Tract Declaration (fixing allowed uses) and a Supplemental Declaration (annexing property) may be combined into a single instrument. The Land Use Classifications for Lots and Parcels established by a Tract Declaration shall not be changed except as specifically permitted by this Declaration or in the applicable Tract Declaration. Land Use Classifications for any of the Annexable Property that may be annexed hereto as provided in Section 18 may include, but are not limited to, the following:

4.1.1 Single Family Residential Use. May include Common Areas and Village Common Areas.

4.1.2 Cluster Residential Use. May include Common Areas and Village Common Areas and which shall consist of Lots with Dwelling Units intended for Single Family occupancy and may include those types of residential housing arrangements known as patio homes, townhouses, clustered housing, zero-lot line housing, and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Occupants of the Lots in the cluster development.

4.1.3 Association Use. May include Common Areas. In addition, should Declarant or any Developer Owner, Village Builder or any Owner or prospective Owner wish to establish another Land Use Classification that is (i) permitted by applicable zoning and (ii) not included in the foregoing Land Use Classifications, Declarant may, at its option and in its discretion, create a Land Use Classification to accommodate the particular use. In conjunction with the establishment of an additional Land Use Classification, Declarant shall establish Membership and voting rights, Assessments, and other covenants, conditions, and restrictions with respect to Property within the additional Land Use Classification; provided, however, that any Membership rights, voting rights, and Assessments shall not be substantially inconsistent with those established with respect to the Land Use Classifications described in this Declaration.

4.2 Covenants, Conditions, Restrictions and Easements Applicable to Lots and Parcels Within All Land Use Classifications. The following covenants, conditions, restrictions, and reservations of easements and rights shall apply to all Lots, Parcels, and Common Areas, and Village Common Areas, and to each Owner and Occupant regardless of Land Use Classifications, except that they shall not apply to any Parcels or Lots having a Land Use Classification of Association Use.

4.2.1 Development Control. No building, fence, wall, residence, or other structure or improvement of whatever type that is Visible from Neighboring Property shall be commenced, erected, or maintained except in conformance with drawings, specifications and other requirements that have been submitted to and approved in writing by the Architectural Review Committee or the Board in accordance with this Declaration. No subsequent additions, changes or alterations to any building, fence, wall, or other structure (including the exterior color scheme) and all changes in the grade of Lots or Parcels, shall be commenced or made except in conformance with drawings and specifications that have been submitted to and approved in writing by the Architectural Review Committee or the Board in accordance with this Declaration. No changes or deviations in or from the plans, specifications and other requirements approved by the Architectural Review Committee or Board shall be made without the prior

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over the Property. Normal construction activities and parking in connection with the building of improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration unless they are in violation of the Architectural Design Guidelines or requirements of the Architectural Review Committee or Board. Lots, Parcels, Common Areas, and Village Common Areas shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber, and other building materials shall be piled only in such areas as may be approved by the Architectural Review Committee or Board. In addition, any construction equipment and building materials stored or kept on the Property during construction of improvements may be kept only in areas approved by the Architectural Review Committee or Board, which also may require screening of the storage areas. The Board, in its sole discretion (but subject to the provisions of this Declaration including, but not limited to, Section 4.2.24), shall have the right to determine the existence of any unreasonable annoyance or nuisance under this Declaration.

4.2.6 Boats and Motor Vehicles. Except as specifically permitted by the Association Rules, (a) no boat, trailer, bus, motor home, camper, or other recreational or similar vehicles shall be parked or stored in or upon any portion of the Property so as to be Visible from Neighboring Property; (b) no vehicle shall be repaired, serviced, or rebuilt on any portion of Property; and (c) nothing shall be parked on any Private Roads, except in such parking areas as may be designated by the Architectural Review Committee or the Board, or on a recorded Tract Declaration or subdivision (or similar) plat. The Board may remove, or cause to be removed, any unauthorized vehicle at the expense of the vehicle's owner in any manner consistent with law. Notwithstanding the foregoing, motor homes and similar vehicles may, no more than twice in any thirty (30) day period, be temporarily parked on a Lot, where they are Visible from Neighboring Property, for the purpose of loading or unloading the vehicles so long as they do not remain visible for more than 48 hours, unless the Board grants permission for a longer period upon a showing of good cause.

4.2.7 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot or Parcel that will allow light to be directed or reflected unreasonably on any portion of the Common Areas, the Village Common Areas or any other Lot or Parcel, except as may be expressly permitted by the Association Rules or the Architectural Design Guidelines.

4.2.8 Antennas/Cable TV. The Board may adopt reasonable rules, restrictions and requirements from time to time regulating the placement, appearance, size operation, and other aspects of any antennas, satellite dishes, and other similar structures and devices allowed for use on Lots within the constraints of any applicable law. Any such rules, restrictions and requirements shall take into account aesthetic considerations, available technology, cost, feasible alternatives, and the effect (if any) of applicable laws and other requirements of governmental authorities. The Board shall have the authority under Section 5.18 (but no obligation) to enter into contracts providing for the availability of cable TV and related services to the Property (or to such Villages or other portions as the Board deems appropriate) on such terms as the Board may elect. If the Board elects to enter into such contracts, the costs of any such service shall be a common expense payable by those properties to which service is available (whether or not the owner elects to receive the service) but the Board may allocate the costs of such service between

improved and unimproved properties that are subject to Assessments in such proportions as the Board deems equitable.

4.2.9 Garbage. No garbage or trash shall be kept, maintained, or contained in or upon the Property so as to be Visible From Neighboring Property except on the day of pickup, and in containers approved by Association Rules or Architectural Design Guidelines. No incinerators or foliage shredders shall be used on the Property by any Owners, but this restriction shall not be deemed to apply to use of such equipment by the Association in connection with its duties hereunder. No refuse pile, garbage, or unsightly objects shall be allowed to be placed, accumulated, or suffered to remain anywhere on the Property. Notwithstanding the foregoing, the Architectural Review Committee may (but shall not be obligated to) designate one or more locations within the Property to be centralized collection points for recycling of trash, garbage, or similarly reusable materials, and Declarant may (but shall not be obligated to) designate one or more centralized collection points within any portion of the Annexable Property at the time the portion of the Annexable Property is annexed to the Property.

4.2.10 Mining; Wells. No Lot or Common Area shall be used in any manner to explore for or remove any water, oil, or other hydrocarbons or minerals of any kind or earth substance of any kind. Without limiting the generality of the foregoing, no well for the pumping or removal of water shall hereafter be placed in or upon the Property. Notwithstanding the foregoing, nothing in this Section shall be deemed or construed to diminish any rights which may exist with respect to wells in existence on the effective date hereof, or use of the water therefrom or to diminish the right of Declarant to place additional wells in the Property for potable or irrigation water purposes.

4.2.11 Safe Condition. Without limiting any other provision in this Section 4.2 but subject to any responsibility of the Association for Areas of Common Responsibility, each Owner shall maintain and keep the Owner's Lot or Parcel at all times in a safe, sound, and sanitary condition and repair and shall correct any condition or refrain from any activity that might interfere with the reasonable enjoyment by other Owners and Occupants of their respective Lots or Parcels or the Common Areas or Village Common Areas.

4.2.12 Fires.

(a) Other than barbecues in properly constructed barbecue pits or grills, and fire pits in compliance with any applicable Association Rules and Architectural Design Guidelines, or as otherwise expressly permitted in the Association Rules or Architectural Design Guidelines, no open fires shall be permitted on the Property nor shall any other similar activity or condition be permitted that would tend to increase the insurance rates for the Common Areas or Village Common Areas, or for other Owners.

(b) Each Owner and other Person acquiring any interest in the Property acknowledges that the proximity of the Property to natural areas may expose the Property to higher risk of wildfires than would exist in a more developed area and each such Person, by acquiring title to a Lot or other interest, hereby releases Declarant, the Association, Village Builders, Developer Owners, and Related Entities (and their respective principals, committees, officers, directors, agents and employees) from any and all claims, actions, suits, demands,

causes of action, losses, damages or liabilities related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting directly or indirectly from any such increased risk of fire.

4.2.13 Clothes Drying Area. No exterior portion of the Property that is Visible From Neighboring Property shall be used as a drying or hanging area for laundry of any kind.

4.2.14 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit, or allow any fence or other improvement or other obstruction that would interrupt the normal drainage of the land or within any area designated by a recorded plat (or other recorded instrument) as a "drainage easement" (or similar designation) except that, with the prior consent of governmental authorities and the Architectural Review Committee, nonpermanent structures, (including fences), may be erected in those areas that contain only underground closed conduit storm drainage facilities.

4.2.15 Rental of Lots or Parcels. An Owner who leases or otherwise grants any Person occupancy rights to the Owner's Lot or Parcel shall be responsible for assuring compliance by the Occupant with all of the provisions of this Declaration, any applicable Tract Declaration, the Articles, Bylaws, Association Rules, and Architectural Design Guidelines, and shall be jointly and severally responsible for any violations by the Occupant.

4.2.16 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a Dwelling Unit on any property shall be removed immediately after the completion of construction. Any such buildings or structures shall be painted a color approved by the Architectural Review Committee within one week after they are brought to the Property.

4.2.17 Maintenance of Lawns and Plantings. Each Owner shall keep all shrubs, trees, hedges, grass, and plantings of every kind located on the Owner's Lot or Parcel (including setback areas and easements) neatly trimmed, shall keep all of those areas properly cultivated and free of trash, weeds, and other unsightly material, and shall maintain in good condition and repair all paved, concrete and other synthetically surfaced areas, including, but not limited to, driveways, roadways, and parking areas.

4.2.18 Diseases and Insects. No Owner shall cause or permit any thing or condition to exist upon the Property that induces, breeds, or harbors infectious plant disease or noxious insects.

4.2.19 Repair of Structures. No building, structure, or improvement on the Property shall be permitted to fall into disrepair, and (subject to any provisions of this Declaration or a Tract Declaration expressly imposing maintenance and repair obligations on the Association or other Persons) each building, structure and improvement on the Property shall at all times be kept by the Owner in good condition and repair and adequately painted or otherwise finished. If any building, structure, or improvement is damaged or destroyed, then, subject to the approvals required by Section 4.2.1, the building or structure shall be immediately repaired or

rebuilt or shall be demolished and the portion of the Property upon which it was located shall be cleared and restored to a presentable and safe condition.

4.2.20 Restriction On Further Subdivision. No Lot shall be divided or subdivided, nor shall any easement or other interest in any Lot be conveyed, after the Lot has been purchased by a Retail Purchaser. Without the express written consent of Declarant, no Parcel shall be divided or subdivided, nor shall any easement or other interest in any Parcel be conveyed, after the Parcel has been purchased by a Retail Purchaser. Notwithstanding the preceding sentence, Declarant may, with the approval of all governmental authorities having jurisdiction, (i) relocate the property line of any Lot or Parcel owned in fee or beneficially by Declarant or by any Related Entity Owner (with the Related Entity Owner's consent) and (ii) resubdivide or replat Lots or Parcels owned in fee or beneficially by Declarant or by any Related Entity Owner (with the Related Entity Owner's consent). An Owner of one or more contiguous Lots may combine the Lots into a single Lot with the consent of governmental authorities and the Board; provided, however, that any combination of Lots shall not reduce or otherwise alter the voting rights obtained by ownership of each Lot nor shall it reduce or otherwise alter the amount that would have been assessed against the Owner of the Lots pursuant to the terms of this Declaration. Notwithstanding the preceding sentence, the Owner of two or more Lots combined into a single Lot may request that the Board reduce voting rights and the assessments for the combined Lots to equal the voting rights and assessments that would be appurtenant to a single Lot under this Declaration. If the Board consents to the reduction of voting rights and assessments, then the Owner of two or more combined Lots shall, for all purposes under this Declaration, be deemed an Owner of a single Lot.

4.2.21 Utility Service. No lines, wires, or other services for the communication or transmission of electric current or power or electromagnetic impulses, including telephone, television, and radio signals, shall be erected, placed, or maintained anywhere in or upon the Property unless they are contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Review Committee. Notwithstanding the foregoing, but subject to any applicable requirements of governmental authorities, the Architectural Review Committee may authorize the erection of microwave towers and similar structures on Common Areas or Village Common Areas for centralized reception, transmission, and retransmission of microwave and similar signals. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings, structures, or improvements approved by the Architectural Review Committee.

4.2.22 Overhead Encroachments. Without the prior approval of the Architectural Review Committee no tree, shrub, or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other Common Area or Village Common Areas from ground level to a height of eight feet.

4.2.23 Right of Entry. Any member or authorized consultant of the Architectural Review Committee, or any authorized officer, director, employee, or agent of the Association, shall have the right to enter upon and inspect any Lot or Parcel (but not the interior of any occupied Dwelling Unit) for the purpose of ascertaining whether the provisions of this Declaration have been or are being complied with. Any entry pursuant to this Section 4.2.23

shall be at a reasonable time and after reasonable notice to the Owner. No one entering a Lot or Parcel under the authority of and pursuant to this Section 4.2.23 shall be deemed guilty of trespass.

4.2.24 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent or materially impair the erection, operation, maintenance, replacement, and repair by Declarant, or its duly authorized agents, of structures, improvements, or signs necessary or convenient to the development, operation, and sale or leasing of property within the Project, whether or not that property is (or is intended to be) a part of the Property. Without limiting the generality of the preceding sentence and notwithstanding anything to the contrary provided in this Declaration, (a) Declarant is expressly exempted from the provisions of this Declaration requiring submittals to or authorizations by the Architectural Review Committee including, but not limited to, Section 4.2.1 and Section 13, and (b) Declarant shall have the right to erect, operate and maintain one or more administrative and sales offices on any property within the Project owned in fee or beneficially or leased by Declarant or any Related Entity Owner (including, but not limited to Lots with a residential Land Use Classification).

4.2.25 Health, Safety, and Welfare. If any uses, activities, and facilities are deemed by the Board to be an unreasonable annoyance or a nuisance, or to adversely affect the health, safety, or welfare of Owners or Occupants, the Board may make such rules restricting or regulating their presence on the Property as part of the Association Rules or may direct the Architectural Review Committee to make rules governing their presence on Lots or Parcels as part of the Architectural Design Guidelines. Any rules promulgated pursuant to this Section 4.2.25 shall be consistent with the provisions of this Declaration including, but not limited to, Section 4.2.24.

4.2.26 Model Homes. The provisions of this Declaration, and any Tract Declarations that prohibit nonresidential use of Lots and Parcels and regulate parking of vehicles, shall not prohibit the construction and maintenance of model homes by Persons engaged in the construction of Dwelling Units on the Property and parking incidental to the model homes so long as (i) the location of each model home is approved by the Architectural Review Committee, (ii) the opening and closing hours are approved by the Board, and (iii) the construction, operation (including means of access, amount of lighting and number and appearance of signs), and maintenance of each model home otherwise complies with all of the provisions of this Declaration, any applicable Tract Declaration, the Architectural Design Guidelines, and the Association Rules. The Architectural Review Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as the parking and parking areas are in compliance with the requirements of governmental authorities, the Association Rules, and any requirements of the Architectural Review Committee. Any home constructed as a model home shall cease to be used as a model home at any time the Owner or Occupant of the model home is not actively engaged in the construction and sale of Dwelling Units on the Property or the Project, and no home shall be used as a model home for the sale of homes not located on the Project.

4.2.27 Incidental Uses. The Board may approve uses of property not specifically permitted by the applicable Land Use Classification or designated on the applicable Tract Declaration if these additional uses are incidental to the full enjoyment by the Owners of the

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property within that Land Use Classification. The Board's approval may be subject to whatever regulations, limitations, and restrictions, including termination of the additional use, as the Board may wish to impose, in its sole discretion, for the benefit of the Property or the Project as a whole.

4.2.28 Walls/Fences. Except as provided in this Section, any wall or fence located on a Lot or Parcel shall be the responsibility of the Owner of the Lot or Parcel.

(a) If a wall or fence on a Lot or Parcel separates a Lot or Parcel from any Common Areas or Village Common Areas, and the wall or fence is located within a Perimeter Wall Easement, the Association shall be responsible for maintaining (and repairing, as necessary) the surface of the wall or fence facing the Common Areas or Village Common Areas and the Owner of the Lot or Parcel shall be responsible for any other maintenance and repair of the wall or fence. If such a wall contains so-called "view" elements such as wrought iron, the Association's responsibility shall extend to both sides of the "view" element.

(b) If a perimeter wall or fence separates portions of the Property from land that is not included in the Project, rather than from Common Areas, the Association shall be responsible for all maintenance and repair of the wall or fence.

4.2.29 Roof Mounted Mechanical Equipment. No roof-mounted mechanical equipment will be allowed on any Lot.

4.3 Covenants, Conditions, Restrictions and Easements Applicable to Lots and Parcels in any Residential Land Use Classification. In addition to the provisions of any applicable Tract Declaration, the provisions of this Section shall apply to any portion of the Property given a Residential Land Use Classification.

4.3.1 Residential Use Only. Each Lot and Parcel within a Residential Land Use Classification may be used only for residential purposes. No Business Use may be made of any such Lot or Parcel.

4.3.2 Board Powers. The scope of activities prohibited by this Section may be clarified, supplemented and interpreted by the Board (or by Declarant, prior to the Transition Date) from time to time, as it may choose in its sole and absolute discretion, so long as not materially inconsistent with the terms set forth above.

4.4 Tract Declarations. As land in the Property is readied for development, a Tract Declaration will be recorded for it.

4.4.1 Required Consent. Each Tract Declaration shall be executed by Declarant and by the owner of the land subject to it (if the owner is other than Declarant).

4.4.2 Required Contents. A Tract Declaration shall set forth any Land Use Classifications for the land subject to it and may contain such additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the land subject to it. Unless otherwise provided in this Declaration, the definitions and characteristics of Land

Use Classifications, and specific permitted and prohibited uses, shall be set forth in Tract Declarations but all Tract Declarations shall be subject to applicable zoning laws.

4.4.3 Allowed Contents. Among other things, a Tract Declaration may (a) designate Areas of Common Responsibility, Common Areas, Village Common Areas, and Village boundaries, (b) reserve or grant easements to such Persons and for such purposes as Declarant may deem appropriate, (c) impose such additional covenants, conditions and restrictions as Declarant may deem appropriate for the land subject to the Tract Declaration, (d) determine Village Assessments and the allocation of Village Assessments among the Lots or other properties subject to the Village Assessment, (e) provide for Assessments appropriate to the land subject to the Tract Declaration, and (f) provide for any modification of voting rights appropriate to the land subject to the Tract Declaration.

4.4.4 Consistency with Declaration. A Tract Declaration shall not be materially inconsistent with the plan of this Declaration and shall not revoke or modify the covenants established by this Declaration (or by any previous Tract Declaration) with respect to any other portion of the Property.

4.4.5 Amendment. Except as otherwise expressly provided in a Tract Declaration itself, a Tract Declaration may only be amended by a written instrument executed by all of the following: (i) owners holding at least 67% of the votes in the Association attributable to the property which is subject to the Tract Declaration, (ii) the Board of the Association, and (iii) Declarant, so long as Declarant or a Related Entity owns any portion of the Property or the Annexable Property in fee or beneficially.

4.5 Implementation and Variances. The Board may implement the restrictions set forth in this Section 4, or otherwise restrict and regulate the use and occupancy of the Property and the Lots and Parcels by reasonable rules and regulations adopted by the Board from time to time that shall be incorporated into the Association Rules. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Section 4 or in any Tract Declaration if the Board determines, in its discretion, (a) either (i) that a restriction would create a substantial hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered the restriction obsolete, and (b) that the activity permitted under the variance, in the reasonable opinion of the Board, will not have any substantial adverse effect on the Owners and Occupants of the Property and is consistent with the high quality of life intended for residents of the Property.

5. ASSOCIATION.

5.1 Purpose of Association. The Association has been or will be incorporated as a nonprofit corporation to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Property; for the assessment of expenses, payment of losses, disposition of casualty insurance proceeds; and for other matters as provided in this Declaration, any Tract Declaration, the Articles, Bylaws, Association Rules, and Architectural Design Guidelines. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this

Declaration, any applicable Tract Declaration, the Articles, the Bylaws, and laws applicable to nonprofit corporations.

5.2 Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, and any Tract Declaration, the Association and its directors, officers, employees, agents, and Members shall have such rights and powers as are set forth in the Articles and Bylaws and are not inconsistent with law or this Declaration. The Association's rights and powers, subject to the approval by any agencies or institutions deemed necessary by Declarant, may encompass any and all things that an individual could do or that now or subsequently may be authorized by law. No provision of the Articles or Bylaws may be inconsistent with this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

5.3 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and any officers that the Board elects or appoints in accordance with the Articles and the Bylaws. The initial Board shall be composed of three members appointed by Declarant and designated in the Articles. The Board may also appoint various committees (which may consist, in whole or in part, of individuals who are not on the Board) and may appoint a manager or managing agent who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or managing agent.

5.4 Association Rules. The Board shall be empowered to adopt, amend and repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), to govern the use and/or occupancy of the Common Areas and any other parts of the Property. The Association Rules shall be effective upon adoption (or at such later time as may be specified in the Association Rules), and shall be binding upon all Persons subject to this Declaration. The Association Rules may include the establishment of a system of fines and penalties enforceable as Assessments. The Association Rules shall govern the use and/or occupancy of the Property in furtherance of the purposes of the Association and this Declaration including, but not limited to, the use of the Common Areas, Village Common Areas, and Areas of Common Responsibility. Except as expressly provided or permitted by this Declaration or an applicable Tract Declaration, the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, Bylaws, or Architectural Design Guidelines. The Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and (subject to Section 19) and shall be binding on Owners and all other Persons having any interest in, or making any use of, the Property (whether or not the Owner or other Persons actually received a copy of the Association Rules). The Association Rules shall be available upon request at the principal office of the Association to each Owner or other Person reasonably entitled to review them. If there is any conflict between any provision of the Association Rules and any provision of this Declaration or the Articles, Bylaws, or Architectural Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, Bylaws, or Architectural Design Guidelines to the extent of any conflict.

5.5 Indemnification. To the fullest extent permitted by law, the Association shall indemnify the following Persons against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Architectural Review Committee), or any settlement of any proceeding:

5.5.1 Directors and Officers. Every director and officer of the Association and every member of the Architectural Review Committee;

5.5.2 Declarant. Declarant and every Related Entity; and

5.5.3 Agents. Every other Person serving as an employee of the Association or on behalf of the Association as a member of a committee or otherwise.

Any agent of the Association may, in the discretion of the Board and subject to the findings described below, also be indemnified by the Association. Any Persons described in the first sentence shall be entitled to indemnification whether or not they are directors, officers, or members of the Architectural Review Committee or serving in any other specified capacities at the time the expenses are incurred. Notwithstanding anything to the contrary in this Declaration, before any Person is entitled to indemnity pursuant to this Section 5.5, the Board shall determine, in good faith, that the Person to be indemnified did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of their duties. These rights of indemnification shall be in addition to and not exclusive of all other rights to which the Persons to be indemnified may be entitled at law or otherwise.

5.6 Non-Liability of Officials. To the fullest extent permitted by law, the following Persons shall have no liability to any Member, Owner, Occupant, the Association, or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval, or disapproval of drawings or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence, or the like made in good faith and that was reasonably believed to be within the scope of their respective duties and/or rights:

5.6.1 Declarant. Declarant and any Related Entity;

5.6.2 Builders and Developers. Village Builders and Developer Owners,

5.6.3 Association Staff. The manager and other employees of the Association;

5.6.4 Directors and Officers. The directors and officers of the Association; and

5.6.5 Committees. The Architectural Review Committee and other committees of the Association and the respective member thereof.

Each Owner, Occupant, and other Person having any interest in the Property or entering upon or using any portion of the Property is deemed to acknowledge and accept the following:

(a) None of the Persons described above in this Section 5.6 shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant, or other Person entering upon or making use of any portion of the Property. Each Owner, Occupant, and other Person assumes all risks associated with the use and enjoyment of the Property including, but not limited to, any recreational facilities upon or within the Property.

(b) None of the Persons described above in this Section 5.6 shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property. Each Owner, Occupant and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property.

(c) No provision of this Declaration, any Tract Declaration, the Articles, the Bylaws, the Architectural Design Guidelines, or the Association Rules shall be construed or interpreted as creating a duty by any of the Persons described above in this Section 5.6 to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

Following the Transition Date, failure of a Board member to disclose fully (i) the Board member's relationship with legal counsel for the Association and any management company retained by the Association, and (ii) the nature of any financial gain the Board member may receive upon the Association's institution of any litigation shall be deemed bad faith and shall subject the Board member to liability, including, but not limited to, liability for (a) breach of the covenant of good faith and fair dealing, and (b) breach of the duty of loyalty.

5.7 Easements. In addition to the blanket easements granted in Section 16, the Board is authorized and empowered to grant such permits, licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable, and other similar public or private utility purposes, security lines, roadways or other purposes that may be reasonably necessary and appropriate for the orderly maintenance, preservation, and enjoyment of the Common Areas or for the preservation of the health, safety, convenience, and welfare of the Owners, provided that any resulting damage to a Lot or Parcel shall be repaired by the Association at its expense.

5.8 Accounting. The Association shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles. Such records shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise. Notwithstanding anything to the contrary in this Declaration, the Association's records of account may be kept on a cash accounting basis if the Board so elects, subject to the requirements of applicable law. The Board may cause the books and records of the Association to be audited or reviewed by independent auditors, or not, as the Board may elect from time to time.

5.9 Records. Upon reasonable written request and pursuant to procedures established by the Board, the Association shall make the books, records, and financial statements of the

Association available for inspection by each Owner and Member together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, Association Rules, and Architectural Design Guidelines. Declarant shall not be under any obligation to make its own books and records available for inspection by any Owner, Member or other Person.

5.10 Manager or Managing Agent. All powers, duties and rights of the Association or the Board, as provided by law and in this Declaration, may be delegated to a manager or managing agent; provided, however, that no delegation shall relieve the Association of its obligation to cause any delegated duty to be performed. Any agreement for management, or any other contract providing for services to the Association, shall not exceed a term of three years, subject to renewal by agreement of the parties for successive one-year periods, and shall further allow for termination by the Association with or without cause and without payment of a termination fee upon 90 days' written notice.

5.11 Rights of Enforcement. The Board shall have the exclusive right to enforce the provisions of this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens, or easements provided for in any contract, deed, declaration or other instrument relating to the Property that have been executed pursuant to, or subject to, the provisions of this Declaration, or otherwise indicate that its provisions were intended to be enforced either by the Association or by Declarant. If, however, the Board fails or refuses to enforce this Declaration or any provision of the instruments listed above for an unreasonable period of time after written request to do so, then an Owner (at the Owner's expense) may enforce them on behalf of the Association by any appropriate legal action, whether at law or in equity. Notwithstanding any provision hereof concerning the rights and powers of the Board, Declarant may pursue whatever rights and remedies might be available to it at law or in equity. Notwithstanding any provision of this Declaration, Declarant shall not have any duty to undertake any such enforcement actions and shall not be deemed a guarantor of enforcement.

5.12 Contracts With Others For Performance of Association's Duties. Subject to the restrictions and limitations contained in this Declaration, the Board may enter into contracts and transactions with others, including Declarant, any Related Entity and any affiliated Persons, for the performance of the Association's duties and for other purposes consistent with this Declaration. No contract or transaction shall be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee may be employed by or otherwise connected with the other party to the contract or transaction, provided that any relationship of the other party to directors or officers of the Association and members of any committee is disclosed or known to the other directors or committee members acting upon the contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any director, officer, or committee member with a relationship to, or any other interest in, the other party to the contract (i) may be counted in determining the existence of a quorum at any meeting that authorizes any contract or transaction described above or that grants or denies any approval sought by the other party, and (ii) may vote there to authorize any contract, transaction or approval, as if the director or member had no relationship to the other party to the contract.

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5.13 Changes to Common Areas and Village Common Areas. The Association, through the action of the Board, may sell, exchange, convey, or abandon any Common Areas or Village Common Areas subject to the requirements of this Section 5.13:

5.13.1 Change Use. The Board may change the use of any Common Areas or Village Common Areas subject to the following conditions and requirements:

(a) the Board has determined that the change is in the best interest of the Property, the Project, and the Owners and Occupants; and

(b) the land remains part of the Common Areas or Village Common Areas.

Prior to the Transition Date, the Board may act to effect a change in use described in this Section 5.13.1 without the vote or consent of any Owner or other Person. After the Transition Date, the Board may act to effect a change in use described in this Section only with the consent of Declarant so long as Declarant or any Related Entity Owner owns any portion of the Property or the Annexable Property in fee or beneficially.

5.13.2 Change Title. The Board may sell, exchange, convey, or abandon any Common Areas or Village Common Areas provided the action is approved by the Declarant so long as Declarant or any Related Entity Owner owns any portion of the Property or the Annexable Property in fee or beneficially, if it is being taken after the Transition Date. If access to any Lot or Parcel is through a particular portion of the Common Area, any sale or encumbrance of that portion of Common Area must be subject to an access easement in favor of the Lot or Parcel.

5.13.3 Consent Requirements. No portion of the Common Areas may be mortgaged or transferred without consent of at least two-thirds of the Class A votes then entitled to be cast. Minor adjustments to the boundaries of Lots, Common Areas and other portions of the Property, and the transfer of easements and rights-of-way to public agencies, authorities or utilities may be approved by the Board without submitting the matter for a vote of the Members.

5.14 Purposes For Which Association's Funds May be Used. The Association, except as otherwise permitted in this Declaration, shall apply all funds and property collected and received by it from any source (including Assessments, fees, loan proceeds, and surplus funds) and all for the common good and benefit of the Property, the Owners, and Occupants by devoting these funds and property, among other things, to the Common Expenses described in Section 1.19. Notwithstanding these requirements, all funds of the Association shall be deemed to be the sole property of the Association in its corporate capacity, and not trust funds, and the Association shall not be deemed to hold any funds as trustee or in any fiduciary capacity, except as expressly provided in this Declaration. The Association also may expend its funds for any purposes for which any municipality in the State of Arizona may expend its funds under the laws of the State of Arizona or the municipality's charter.

5.15 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time, as the Board deems necessary or appropriate.

5.16 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in that year, regardless of source, unless specifically provided to the contrary in this Declaration. The Association may carry forward as additional working capital or reserves any remaining balances. The Association shall not be obligated to reduce the amount of the Base Assessments in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year any surplus that the Board, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

5.17 Special Use Fees. Subject to the provisions of this Declaration including, but not limited to, Section 4.2.24, and any applicable provisions of any Tract Declaration, the Board is authorized to impose, bill for, sue for, collect, administer, and disburse Special Use Fees, and the payment of all Special Use Fees shall be secured by the Assessment Lien. In establishing or adjusting the amounts of Special Use Fees from time to time, the Board shall have the absolute discretion to establish reasonable classifications among Owners, Occupants, and other Persons.

5.18 Designated Service Providers. The Board shall have the authority to designate exclusive providers of services within the Property when the Board deems it necessary or desirable to do so for reasons of obtaining better rates or terms of service or for other reasons deemed reasonable by the Board. Such services may, if the Board so elects, include (but are not limited to) garbage collection, cable TV, security services and internet services. If the Board makes such a designation, the Association may enter into an agreement with the designated service provider, and the cost of services purchased by the Board shall be considered a Common Expense of the Association and shall be included in the Base Assessments payable by each Owner provided, however, that the Board may allocate such costs between improved and unimproved properties, among classes of property, or among Villages in such a manner as the Board deems equitable. Notwithstanding any designation and negotiation with a service provider, each Owner may contract separately with the designated service provider to receive services in excess of those provided to the Property pursuant to the service provider's agreement with the Association, and the cost of the additional services shall be paid separately by the Owner and shall not be an Assessment under this Declaration. Any service provider designated by the Board pursuant to this Section 5.18 shall have an easement over the Common Areas and Village Common Areas to the extent necessary or convenient for the efficient delivery of the designated service.

6. MEMBERSHIPS AND VOTING.

6.1 Owners of Lots and Parcels.

6.1.1 Number of Memberships. Except as may be otherwise provided in any particular Tract Declaration for portions of the Property subject to the Tract Declaration, all Lots and Parcels shall be entitled to Memberships in the Association as follows:

- (a) one Membership for each Lot.
- (b) In the case of a Parcel with a Land Use Classification of Single Family Residential Use or Cluster Residential Use but as to which a subdivision plat has not been

recorded, one Membership shall be appurtenant to each one acre (net of anticipated road rights-of-way) in the Parcel. If a subdivision plat or other instrument creating Lots is recorded covering all or part of the area within the Parcel, then there shall be one Membership for each platted Lot and the Parcel shall be reduced in size by the area so platted. The Owner of the remainder of the unplatted portion of the original Parcel shall be entitled to one Membership for each one acre (net of anticipated road right-of-way) in the unplatted remainder of the Parcel so long as it remains unplatted and shall be entitled to one Membership for each Lot thereafter platted.

(c) In the case of a Parcel having a Land Use Classification other than those discussed in Section 6.1.1(b), unless otherwise provided in the Tract Declaration for that Parcel, there shall be one Membership for each acre (43,560 square feet), or fraction thereof, in each Parcel owned.

6.1.2 Appurtenant to Property. Each Membership shall be appurtenant to and may not be separated from ownership of, the Lot or Parcel to which the Membership is attributable.

6.1.3 Class of Memberships. All Memberships, except the Class B Memberships held by the Declarant pursuant to Section 6.8, shall be Class A Memberships, and from and after the Transition Date, each Owner shall be entitled to one vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof.

6.2 Declarant's Voting Rights and Assignment. Notwithstanding anything to the contrary in this Declaration and except as set forth in Section 7.5 of this Declaration, Declarant shall, until the Transition Date, be the only member with voting rights. If any lender to whom Declarant has assigned or hereafter assigns all or substantially all of its rights under this Declaration succeeds to the interests of Declarant by virtue of that assignment, the voting rights of Declarant shall not be terminated and the lender shall hold Declarant's Memberships and voting rights on the same terms as they were held by Declarant pursuant to this Declaration.

6.3 Right to Vote. Until the Transition Date and except as specifically provided in Section 24 of this Declaration, Declarant shall be the only Member entitled to vote. Upon the Transition Date, Class B Memberships shall automatically and irrevocably convert to Class A Memberships and Class A Members will then be entitled to voting rights under this Declaration. Notwithstanding anything in this Declaration to the contrary, no Class A Membership (except those held by Declarant) shall be entitled to vote until the Lot or Parcel to which it is appurtenant is subject to Assessments under this Declaration. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of the change and is provided satisfactory proof of the change and the identity of the new Owner. Each vote for a Membership must be cast as a unit, and fractional votes shall not be allowed. If a Lot or Parcel is owned by more than one individual or entity, each individual and entity shall each be considered a Member but the number of Memberships attributable to the Lot or Parcel shall not be increased by multiple ownership. If the Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will

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Board shall make available for review by Members a proforma operating statement or budget for the upcoming fiscal year that shall, among other things, estimate the total Common Expenses to be incurred for the fiscal year. The Board shall at that time determine and notify each Owner of the amount of the Base Assessment to be paid by each Owner for each Membership then subject to Assessments. The Base Assessment to be paid by each Owner for each Membership subject to Assessments shall equal the estimated total Common Expenses (or any supplemental estimate under Section 7.4.3) multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of Memberships in the Association, as that number is determined in accordance with Section 6.1. Each Owner shall thereafter pay the Base Assessments to the Association at such regular intervals as may be fixed by the Board. Each installment of Base Assessments shall be due and payable on the date specified by the Board. The fiscal year of the Association shall be the calendar year, unless otherwise specified in the Articles or Bylaws.

7.4.3 Adjustment During a Year. Base Assessments may be adjusted during any fiscal year as follows:

(a) If the Board determines during any fiscal year that the total Base Assessments for the current year are or will become inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, then the Board shall immediately (i) determine the approximate amount of the inadequacy, (ii) issue a supplemental estimate of the Common Expenses, and (iii) subject to the limitations set forth in Section 7.5, determine the revised amount of Base Assessments to be paid for the balance of the year by each Owner for each Membership subject to Assessments and the date or dates when due.

(b) If the total Base Assessments for any current year prove to be excessive when compared to the actual Common Expenses, the Association, at its discretion, may (i) retain the excess as additional working capital or reserves as permitted by Section 5.16, (ii) reduce the amount of the Base Assessments for the succeeding year, or (iii) abate collection of Base Assessments for such period as it deems appropriate. No reduction or abatement of Base Assessments because of any anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

7.5 Maximum Annual Base Assessment. The annual Base Assessments provided for herein shall not at any time exceed the Maximum Annual Base Assessment, as determined in accordance with this Section 7.5. For the fiscal year ending December 31, 2005, the Maximum Annual Base Assessment shall be \$540 for each Lot. Thereafter, unless a greater increase is approved by the affirmative vote of 2/3 of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, the Maximum Annual Base Assessment for any fiscal year shall be equal to the Maximum Annual Base Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index—All Urban Consumers—All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, in the index most similar in composition to such index; or (b) 10%. Notwithstanding the foregoing, the Board may, without the approval of the Members, increase

the Maximum Annual Base Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; or (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, in either case (i) or (ii) notwithstanding the fact that the resulting increase in the Maximum Annual Base Assessment is at a rate greater than otherwise permitted under the preceding sentence. In addition, in the event Declarant at any time hereafter annexes any portion or all of the Annexable Property, and the Association's added maintenance and other responsibilities with respect to the Common Area and other property thereby annexed necessitate an increase in the Maximum Annual Base Assessment greater than otherwise permitted under this Section 7.5 without approval of the Members, Declarant may nevertheless increase such Maximum Annual Base Assessment, effective not earlier than the first sale to a Retail Purchaser of a Lot within the portion so annexed, without the vote of the Members, to reflect the increased costs. Any such new Maximum Annual Base Assessment, if so approved, shall thereupon be substituted for the previously established Maximum Annual Base Assessment for the applicable fiscal year of the Association. Nothing herein shall obligate the Board to levy, in any fiscal year, annual Base Assessments in the full amount of the Maximum Annual Base Assessment for such fiscal year, and the election by the Board not to levy annual Base Assessments in the full amount of the Maximum Annual Base Assessment for any fiscal year shall not prevent the Board from levying annual Base Assessments in subsequent fiscal years in the full amount of the Maximum Annual Base Assessment for the subsequent fiscal year (as determined in accordance with this Section 7.5).

7.6 Benefited Assessments. Subject to the provisions of any applicable Tract Declaration, the Board may levy Benefited Assessments against particular Lots or Parcels that are subject to Assessments in accordance with the following:

7.6.1 Purpose of Assessment. The Board may levy a Benefited Assessment to recover the cost, including overhead and administrative expenses, of providing benefits, items, or services to a Lot or Parcel (or to its Owner or Occupant) that are not included in the Common Expenses payable as Base Assessments (including, but not limited to, any charge imposed against Lots pursuant to any agreement with a designated service provider pursuant to an agreement with the Association under Section 5.18 beyond whatever level of base service may be included in Base Assessments). Benefited Assessments under this Section may be levied in advance and payment of the Benefited Assessment may be a condition of providing the benefit, item or service. Benefited Assessments are payable in addition to, and not in lieu of, Base Assessments payable by all Owners.

7.6.2 View Elements. In the event that a so-called "view wall" or "view fence" is constructed to separate any Lot or Parcel from an adjacent Common Area, maintenance or repair obligations related to the wrought iron or other view elements of the wall or fence (but not other portions of the wall or fence) are imposed upon the Association by this Declaration or any Tract Declaration, the costs of any maintenance and repair of the "view wall" or "view fence" shall be assessed (or allocated reasonably) as a Benefited Assessment against the Lots or Parcels on which the wall or fence is constructed (or which abut the wall or fence, if the wall or fence is constructed adjacent to the boundary line of the Lot or Parcel) or may be included in Village

Assessments, as the applicable Tract Declaration may provide (or, if the Tract Declaration does not specify, the Board deems appropriate).

7.6.3 Compliance Costs. The Board may also levy a Benefited Assessment to cover the cost of bringing a Lot or Parcel (or its Owner or Occupant) into compliance with the requirements of this Declaration, any applicable Tract Declaration, the Association Rules, the Architectural Design Guidelines, or the Bylaws. The term "Benefited Assessment" shall also include any fines levied or fixed by the Board or the Architectural Review Committee pursuant to this Declaration. Before any Benefited Assessment is levied pursuant to this Section 7.6.3, any Owner affected by the Benefited Assessment shall be given notice and an opportunity to be heard by the Board (or by a committee designated for the purpose by the Board).

7.7 Village Assessments. Subject to any limitations contained in any applicable Tract Declaration, the Board may impose assessments (each of which shall be referred to herein as a "Village Assessment") against Lots or Parcels within particular Villages in accordance with the following:

7.7.1 Purpose. The Board shall levy a Village Assessment to recover Village Expenses and the cost, including overhead and administrative expenses, of providing benefits, items or services to a Village that are not included in the Common Expenses payable as Base Assessments. Except as otherwise specifically provided in this Declaration, each payment of Village Assessments shall be in such amounts and at such times as determined by the Board for the purpose of funding Village reserves and paying and satisfying Village Expenses, other than expenses related to Capital Improvements (which are dealt with in Section 7.8) and reconstruction of Village Common Areas (which are dealt with in Section 11). Village Assessments are payable in addition to, and not in lieu of, Base Assessments payable by all Owners.

7.7.2 Annual Calculation. Not less than 45 days nor more than 60 days prior to the beginning of each fiscal year of the Association (starting with the first full fiscal year after the sale of the first Lot or Parcel in the Village to a Retail Purchaser), the Board shall make available for review by the Owners within each Village subject to a Village Assessment a proforma operating statement or budget for the upcoming fiscal year that shall, among other things, estimate the total Village Expenses of that Village to be incurred for the fiscal year. The Board shall at that time determine and notify each Owner of the amount of the Village Assessment to be paid for each Membership within the Village then subject to Village Assessments. The Village Assessment to be paid for each Membership subject to Village Assessments shall equal the estimated total Village Expenses (or any supplemental estimate under Section 7.7.3) of the applicable Village multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of Memberships in the Village, as that number is determined in accordance with Section 6.1. Each Owner shall thereafter pay the Village Assessments to the Association at such regular intervals as may be fixed by the Board. Each installment of Village Assessments shall be due and payable on the date specified by the Board.

7.7.3 Adjustment During a Year. Village Assessments may be adjusted during any fiscal year as follows:

(a) If the Board determines during any fiscal year that the total Village Assessments for the current year with respect to any Village are or will become inadequate to meet all Village Expenses of that Village for whatever reason, including Village Expenses in excess of the estimated Village Expenses used in preparation of the Association's budget for that year, then the Board shall immediately (i) determine the approximate amount of the inadequacy, (ii) issue a supplemental estimate of the Village Expenses, and (iii) subject to the limitations set forth in Section 7.7.4, determine the revised amount of Village Assessments to be paid for the balance of the year for each Membership within that Village subject to Village Assessments and the date or dates when due.

(b) If the total Village Assessments for any current year prove to be excessive when compared to the actual Village Expenses, the Association, at its discretion, may (i) retain the excess as additional working capital or reserves as permitted by Section 5.16 (except that the excess amount will be placed in a separate account with funds from that account to be applied only to that Village), (ii) reduce the amount of the Village Assessments for the succeeding year, or (iii) abate collection of Village Assessments for such period as it deems appropriate. No reduction or abatement of Village Assessments because of any anticipated surplus may diminish the quantity or quality of services upon which the Village Expenses for the year in question are based.

7.7.4 Maximum Annual Village Assessment. The maximum annual Village Assessment chargeable against each Membership within the Village may be set forth in the Tract Declaration for that Village. If not, the maximum annual Village Assessment chargeable to each Membership within the Village shall be subject to any limitations provided by law. The maximum annual Village Assessment shall increase each year even if the actual Village Assessment does not increase.

7.8 Capital Improvement Assessments. In addition to Base Assessments but subject to any applicable provisions of a Tract Declaration, the Board may levy a Capital Improvement Assessment against any portion of the Property then subject to Assessments for the purposes described below, with the affirmative vote or written consent of a Majority of Class A Members (excluding Declarant) and with the consent of Declarant (so long as Declarant or any Related Entity Owner owns any property subject to this Declaration or any of the Annexable Property in fee or beneficially or has the right or option to purchase any property subject to this Declaration, or any of the Annexable Property as Declarant). The Board may levy a Capital Improvement Assessment against all of the Lots or Parcels within a particular Village with the affirmative vote or written consent of a Majority of the Class A Members within that particular Village and with the consent of Declarant (so long as Declarant or any Related Entity Owner owns any property subject to this Declaration or any of the Annexable Property in fee or beneficially). A Capital Improvement Assessment may be levied for the purpose of defraying, in whole or in part, the cost of any action or undertaking on behalf of the Association in connection with, or the cost of, any construction or replacement of capital improvements upon the Common Areas or Village Common Areas, including the necessary fixtures and personal property relating to the Improvements. The Board may not levy a Capital Improvement Assessment if the cost of the action or undertaking that gives rise to the Capital Improvement Assessment is covered by the provisions regarding Reconstruction Assessments in Section 11. All amounts collected as Capital Improvement Assessments (i) may only be used for capital improvements, (ii) shall be deposited

by the Association in a separate bank account (amounts collected as Capital Improvement Assessments from a particular Village and not from all Owners within the Property shall be placed in a separate account with funds from that account only to be applied to that Village), (iii) shall not be commingled with any other funds of the Association, and (iv) shall be deemed a contribution to the capital account of the Association by the Owners.

7.9 Uniform Assessment. Village Assessments and Capital Improvement Assessments levied only against a particular Village shall be fixed at a uniform rate per Membership within the Village. The amount of any Base Assessment, Capital Improvement Assessment, and Reconstruction Assessment applicable to the Property, rather than a particular Village, shall be fixed at a uniform rate per Membership.

7.10 Exempt Property. Exempt Property shall be exempt from the Assessments and charges created in this Declaration or any Tract Declaration for so long as it continues to qualify as Exempt Property.

7.11 Time and Manner of Payment; Late Charges and Interest. Assessments shall be due and payable by Owners in such manner and at such times as the Board shall designate, subject to applicable law. If not paid when due, each unpaid Assessment shall have added to it a late charge as the Board may specify from time to time. After whatever deadline the Board may reasonably establish, and to the extent allowed by law, any delinquent Assessment and the applicable late charge shall bear interest at the Default Rate of Interest until paid. Alternatively, the Board may from time to time fix a schedule of late charges (not directly requiring the computation of changing interest rates) applicable to delinquent Assessments. The Board may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of its delinquency, and if any suit, action or arbitration proceeding is brought to collect and/or foreclose the Assessment Lien for any Assessment, then there shall be added to the amount of the Assessment the costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered.

7.12 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or by notice and no offsets against the specified amount shall be permitted for any reason including, but not limited to, a claim that (a) the Association, the Board, or Declarant is not properly exercising its duties and powers as provided in this Declaration; (b) Assessments for any period exceed Common Expenses; or (c) an Owner has made or elects to make no use of the Common Areas or Village Common Areas.

7.13 Reserves. Any reserves that are included in the Common Expenses and that are collected as part of the Base Assessments shall be deposited by the Board in a separate bank account. All reserves shall be held for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws (tax or otherwise) of the State of Arizona or the United States relating to nonprofit corporations or homeowners associations. All reserves shall be deemed a contribution to the capital account of the Association

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by the Owners. The responsibility of the Board shall be only to provide for such reserves, if any, that the Board in good faith deems reasonable, and neither Declarant, any Related Entity, nor the Board (nor any member thereof) shall have any liability to any Owner, any other Person, or to the Association if the reserves prove to be inadequate.

7.14 Additional Working Capital Contribution. To insure that the Association shall have adequate funds to meet its expenses or to purchase, repair or replace improvements, equipment and services in accordance with this Declaration, upon the initial conveyance of each Lot to a Retail Purchaser, and upon each subsequent conveyance of title, the Retail Purchaser (or resale purchaser, as the case may be) shall contribute an amount to the Association equal to twice the monthly installment of Base Assessments in effect at the time of the sale. Funds contributed to the Association pursuant to this Section may be used by the Association for payment of operating expenses, establishment of appropriate maintenance and/or replacement reserves, or any other purpose permitted under this Declaration and shall be in addition to, not in lieu of, any other amounts payable by an Owner at the time of acquiring title or thereafter. The payment obligations set forth in this subsection shall be secured by the Assessment Lien.

7.15 Certificate of Payment. Any Person acquiring an interest in any Lot or Parcel shall be entitled to receive a certificate from the Board setting forth the amount of due but unpaid Assessments relating to the Lot or Parcel. Any Person requesting a certificate pursuant to the preceding sentence shall not be liable for, nor shall any lien attach to the Lot or Parcel in excess of, the amount set forth in the certificate, except for Assessments that occur or become due after the date of the certificate and any interest, costs, attorneys' fees, and any late charges related to those subsequent Assessments.

7.16 Association Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for making, billing and collecting the Assessments provided for in this Declaration provided that the procedures shall not be inconsistent with the provisions of this Declaration or applicable law. Any failure of the Association to send a bill to an Owner shall not relieve an Owner of the Owner's liability for any Assessment or charge under this Declaration, but the Assessment Lien with respect to the unpaid Assessment shall not be foreclosed or otherwise enforced until the Owner has been given such notice as may be required by law or the Bylaws or Association Rules. This notice may be given at any time prior to or after delinquency of the Assessment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot or Parcel changes during an assessment period. Successor Owners of Lots or Parcels shall be given credit for prepayments made by prior Owners on a prorated basis. The amount of the Assessments against Owners who become Owners upon the recordation of a Tract Declaration shall be prorated.

7.17 Enforcement of Lien. The Assessment Lien may be foreclosed by the Association in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 7 relating to the enforcement of the Assessment Lien (including, but not limited to, the provisions of this Section 7.17) shall apply with equal force in each other instance provided for in this Declaration, the Association Rules, or Architectural Design Guidelines whenever it is stated that payment of a particular Assessment, charge, or other sum shall be secured by the Assessment Lien. Nothing in this Declaration shall be construed as requiring the Association to take any action in any particular instance, and the

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failure of the Association to take any action at any time shall not constitute a waiver of the right to take the same or similar action at a later time or in a different instance.

7.18 Pledge of Assessment Rights as Security. The Association shall have the power to pledge the right to exercise its assessment powers and rights provided for in this Declaration as security; provided, however, that any pledge of these powers and rights occurring after the Transition Date shall require (a) the prior affirmative vote or written assent of a Majority of Class A Members (except Declarant), and (b) the consent of Declarant (so long as Declarant, or any Related Entity Owner owns any property subject to this Declaration or any of the Annexable Property in fee or beneficially).

7.19 Village Builders' Assessments and Subsidy Obligation.

7.19.1 Partial Assessment. Any Lot or Parcel owned by a Village Builder, either in fee or beneficially, that is part of the Property subject to Assessments pursuant to Section 7.4, 7.6, 7.7, and 7.8 shall only be liable for 25% of the amount otherwise payable. When conveyed to a Retail Purchaser, any such Lot or Parcel shall become subject to Assessments at the full rate then applying.

7.19.2 Subsidy. Prior to the Transition Date, Developer Owners and Village Builders (including Declarant with respect to any Village for which Declarant, in a Tract Declaration, is designated as a Developer Owner or Village Builder) shall each pay and contribute to the Association, within 30 days following the end of the Association's fiscal year, their pro rata share (based on the proportion of the Property owned by each) of such funds as may be necessary, when added to the Assessments levied by the Association, to provide for (i) the operation and maintenance of the Common Area and any improvements located thereon and any Areas of Association Responsibility, (ii) adequate reserves, and (iii) the performance by the Association of its other obligations under this Declaration, or the Articles or Bylaws. The subsidy obligations under this Section 7.19.2 may, with the consent of Declarant, be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both. In no event, however, shall any subsidy obligation (when added to the Assessments payable by that Developer Owner and/or Village Builder) exceed the amount that would have been payable by the respective Developer Owner or Village Builder if its Lots and Parcels had been subject to full, rather than reduced, Assessments.

7.20 Exemption of Declarant's Lots and Parcels. Notwithstanding anything in this Section 7 to the contrary, prior to the Transition Date, no Assessments shall be levied upon, or payable with respect to, any Parcel owned in fee or beneficially by Declarant or any Related Entity Owner until the earlier to occur of the date (a) the Parcel has been platted and subjected to a Tract Declaration and (b) the Parcel has been conveyed by Declarant to a non-affiliated purchaser other than a Related Entity Owner.

8. MAINTENANCE AND ACCESS CONTROLS.

8.1 Common Areas and Public Right of Way. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, Areas of Common Responsibility, and (unless otherwise provided in the Tract Declaration applicable to a particular

Village) any Village Common Areas including, but not limited to, any landscaping, walkways, riding paths, parking areas, drives, recreational facilities and the roofs, interiors, and exteriors of the buildings, structures, and improvements located upon the Common Areas, Village Common Areas, and Areas of Common Responsibility; provided, however, the Association shall not be responsible for maintaining any Common Areas, Village Common Areas, or Areas of Common Responsibility that are part of Lots or Parcels unless (i) the landscaping or structures are available for use by all Owners and Occupants or are within easements intended for the general benefit of the Property, and (ii) the Association assumes in writing the responsibility for the maintenance, or the Association's responsibility is set forth in a recorded instrument as provided in this Declaration (such as a Tract Declaration). Among other areas, any public trail system within the Project shall be considered Areas of Common Responsibility to be maintained by the Association, or its duly delegated representative, whether or not the trail system has been annexed and subjected to this Declaration.

8.1.1 Standard of Care. The Board shall use a reasonable standard of care in providing for the repair, management, and maintenance of Common Areas, Village Common Areas, and Areas of Common Responsibility so that the Property will reflect a pride of ownership. In the discretion of the Board, the Association may, subject to any applicable provisions relating to Capital Improvement Assessments, perform any of the following within the Common Areas, Village Common Areas, or Areas of Common Responsibility:

- (a) Construct, reconstruct, repair, replace or refinish any improvement or portion thereof;
- (b) Replace injured and diseased trees and other vegetation, and plant trees, shrubs, and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (c) Place and maintain such signs as the Board and Architectural Review Committee may deem appropriate for the proper identification, use, and regulation of these areas;
- (d) Do all such other and further acts that the Board deems necessary or appropriate to preserve and protect these areas and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge of the appropriate maintenance of all Common Areas, Village Common Areas, and Areas of Common Responsibility.

8.1.2 Board's Determination of Responsibility For Maintenance. If any Tract Declaration, subdivision plat, deed restriction, or this Declaration permits the Board to determine whether or not Owners of certain Lots or Parcels will be responsible for maintenance of certain Common Areas, Village Common Areas, Areas of Common Responsibility, Private Roads, or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants of the Property for the Association or an individual Owner to be responsible for this maintenance, considering cost, uniformity of appearance, location, and other factors deemed relevant by the Board.

8.1.3 Contracts For Maintenance. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Section 8.1 and, in order to promote uniformity and harmony of appearance, the Board also may cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having these responsibilities in exchange for the payment of such fees as the Board and the applicable Owners may agree upon. All fees that the Board and Owners agree upon pursuant to the preceding sentence shall be considered Benefited Assessments, and shall be levied and collected by the Board pursuant to Section 0.

8.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. If the need for maintenance, repair, or replacement of Common Areas, Village Common Areas, Areas of Common Responsibility, and any other areas maintained by the Association is caused through the willful or negligent act of any Owner or Occupant or the family, guests, or invitees of either, the cost of all required maintenance or repairs shall be Benefited Assessment against the Owner and the Owner's Lot or Parcel and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot or Parcel pursuant to Section 8.1 in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also be considered a Benefited Assessment against the Owner and the Owner's Lot or Parcel, and shall be levied and collected by the Board pursuant to Section 0.

8.3 Improper Maintenance and Use of Lots and Parcels. Subject to the provisions of Section 4.2.24, if (i) any portion of any Lot or Parcel is so maintained as to present a public or private nuisance or an unreasonable condition (as determined by the Board) with respect to other Owners or Occupants, or as to detract substantially from the appearance or quality of the surrounding Lots and Parcels or other areas of the Property or the Project including, but not limited to, excessive growth of unsightly weeds before improvements are constructed; (ii) any portion of a Lot or Parcel is being used in a manner that violates this Declaration or any applicable Tract Declaration; or (iii) the Owner of any Lot, Parcel or portion thereof fails to perform any of its obligations under this Declaration, any Tract Declaration or applicable Architectural Design Guidelines, then the Board may by resolution make a finding to that effect, specifying the particular condition or conditions that exist, and pursuant thereto give notice to the offending Owner that unless corrective action is taken within a deadline reasonably established by the Board, the Board may cause corrective action to be taken at the Owner's cost. If, at the expiration of the deadline fixed by the Board, the requisite corrective action has not been taken, the Board is authorized and empowered to cause remedial action to be taken. The cost of any remedial action shall become a Benefited Assessment against the offending Owner and the Owner's Lot or Parcel and shall be secured by the Assessment Lien. Notwithstanding the foregoing, if the Board believes that immediate action is or may be necessary to avoid a risk of serious physical injuries to individuals or damage to property, the Board shall be entitled to take whatever action it may believe to be minimally necessary to guard against or prevent injuries or damage without being required to wait after giving notice to the affected Owner for the period otherwise established by the Board as a deadline for action by the defaulting Owner.

8.4 Access Control. The Association, or its duly delegated representative, may operate an access control system for any Village in the Property as follows:

8.4.1 General. Any access control (or similar) system may (but is not required to) include gates and other access control points, both manned and unmanned, at entries to various portions of the Property or any Village; patrol vehicles, patrolmen and patrol supervisors; computer and/or other monitoring equipment; television monitoring devices; burglar and fire alarm devices installed in buildings located on Common Areas, Village Common Areas and Private Roads; communications equipment; direct line phones; and such other devices as may be deemed appropriate by the Board. The cost of any services described in this Section 8.4.1 other than (i) any access control for the entire Property and (ii) roving patrols for the entire Property, shall be part of the Village Expenses.

8.4.2 Individual Lots and Parcels. When appropriate for the efficient administration of a Village including, but not limited to, effective control over access to the Village, the Association may require that any Owner wishing security (or similar) services (including, but not limited to, patrol service and fire and burglar alarm protection) for the Owner's Lot or Parcel (as distinguished from general services under Section 8.4.1) obtain the service from a Person (which may be the Association) selected by the Board to provide such services to all Owners in the Village wishing such services. The Board, however, may not require any Owner to have such services for the Owner's particular Lot or Parcel. The cost of any such services shall not be a Village Expense or included in the Village Assessment, but, if provided by or through the Association, will be a Benefited Assessment against the Owner requesting the service and the Owner's Lot or Parcel. The cost of any such services selected by the Board shall be reasonably competitive with the charges for similar services rendered by unaffiliated companies providing similar services on a contract basis to other communities and customers in comparable areas of Pima County.

8.4.3 Right of Entry. Representatives and agents of the Association including, but not limited to, patrolmen, shall have the right to enter upon all Lots, Parcels, Common Areas, Village Common Areas, and Areas of Common Responsibility when responding to alarms or when otherwise reasonably deemed necessary for the protection of Persons or property, and neither the Association, nor any representative or agent thereof, shall have any liability to any Person when acting in good faith pursuant to this Section 8.4.3.

8.4.4 Liability. Neither the Association, nor Declarant, nor any Related Entity is or should be considered a guarantor or insurer of security in the Property, the Villages or individual Lots or Parcels. Each Owner and Occupant, for themselves and on behalf of their families, guests and invitees, acknowledge and assume the risks that the access control system will not keep out unauthorized pedestrians and other Persons and that gated entries and other features of the access control system may restrict or delay entry into the Property or Villages within the Property by the police, fire department, ambulances and other emergency vehicles or personnel. Neither the Association, nor Declarant, nor any Village Builder, Developer Owner, or any Related Entity (nor any principal, committee, officer, director, agent or employee of any of them) shall be liable to any Owner, Occupant, or other Person for any claims or damages resulting, directly or indirectly, from the construction, existence, operation, failure of operation or maintenance of any gates or access control system, or for delays caused by reason of restricted access to the Property or Villages within the Property, or for the unauthorized entry of pedestrians and other Persons into the Property. Moreover, no approval of a security (or similar) system for a Lot or Parcel by the Architectural Review Committee or the Board shall constitute a

warranty or assurance of any kind by the Architectural Review Committee or Board that the system will function as intended, and neither the Architectural Review Committee nor the Board (nor any member or agent of either) shall have any liability by reason of any approval if any security system fails to prevent or detect the risk for which it is intended.

8.4.5 Release and Waiver. Each Owner and Occupant hereby releases the Association, Declarant, Village Builders, Developer Owners, and Related Entities (and their respective principals, committees, officers, directors, agents and employees) from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting, directly or indirectly, from the construction, existence, operation, failure of operation or maintenance of any gates or access control system, or for delays caused by reason of restricted access to the Property or Villages within the Property, or for the unauthorized entry of pedestrians and other Persons into the Property.

8.4.6 Declarant's Access Rights. For so long as Declarant or a Related Entity owns any portion of the Project in fee or beneficially, Declarant reserves the unrestricted right of access through any gates and other access control points for itself and its successors in interest as to any other property in the Project owned in fee or beneficially by Declarant or a Related Entity and for their respective employees, agents, invitees, licensees, and guests. Notwithstanding anything contained in this Declaration to the contrary, so long as Declarant or a Related Entity owns any portion of the Project in fee or beneficially, no restrictions shall be imposed upon Declarant, any Related Entity or their respective employees, agents, invitees, licensees and guests that impairs access to any portion of the Property (including, but not limited to, restrictions on construction traffic) or that eliminates any easements for construction purposes reserved to Declarant. For so long as Declarant or a Related Entity owns any portion of the Project in fee or beneficially, this Section 8.4.6 may not be amended without the prior written approval of Declarant.

9. INSPECTION AND TURNOVER OF COMMON AREAS.

9.1 Conveyance of Common Areas. It is anticipated that Tracts A, B and C as shown on the Block Plat for the Project recorded as Book 59 of Maps, Page 8, Records of Pima County, Arizona ("Block Plat") and Village 13 as shown on the Plat recorded as Book 59 of Maps, Page 65, Records of Pima County, Arizona shall as, when and to the extent such real property is within the Property be conveyed to the Association on or about the date of recordation of this Declaration and shall subsequently be improved pursuant to one or more Joint Development Agreements between Declarant and certain Developer Owners and Village Builders (each, a "Joint Development Agreement"). It is also currently anticipated that Tracts that are situated within Villages for the Project shall be improved by the Developer Owner or Village Builder who develops each such Village, and following the improvement of such Tracts, the improved Tracts within such Village shall be conveyed by the Developer Owner or Village Builder, as the case may be, to the Association subject to the inspection requirement set forth in Section 9.2 below. All Common Areas shall, however, be conveyed to the Association by quit-claim deed or other appropriate instrument as determined by Declarant, subject to this Declaration and free from all financial liens and encumbrances except property taxes and assessments. All costs and expenses of conveyance of the Common Area to the Association shall be paid by the

Association. Declarant shall cause all tracts within the Property, except those conveyed to Developer Owners or Village Builders, to be improved pursuant to a Joint Development Agreement and conveyed to the Association. However, to the extent improvements to such Common Area tracts (except tracts conveyed to Developer Owners or Village Builders) are made pursuant to a new Joint Development Agreement, the Owners subject to the Joint Development Agreement shall be jointly responsible for the cost of such improvements and any costs to remedy and repair any defects which are discovered within one (1) year of the completion of such improvements.

9.2 Inspection of Common Area Improvements. Not later than each date upon which a Developer Owner or Village Builder conveys any Common Areas in a Village owned by it to the Association and as a condition to each such conveyance, Declarant shall select experts to inspect any completed buildings, rights-of-way, sidewalks or other improvements to those Common Areas to determine whether the improvements have been constructed in substantial compliance with the plans and specifications, as modified by any change orders, and any applicable governmental approvals, and to inspect for defects in materials and workmanship and for governmental code violations. In addition, upon completion of any building, right-of-way, sidewalk or other improvement in Common Areas previously conveyed to the Association (costing in excess of \$10,000), Declarant shall select experts to inspect the completed improvements to determine whether the improvements have been constructed in substantial compliance with the plans and specifications, as modified by any change orders, and to inspect for defects in materials and workmanship and for governmental code violations. The Association shall pay the cost of the inspections and the cost shall be a Common Expense. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot or Parcel, is deemed to agree to the inspectors selected by Declarant and the inspection process set forth in this Section and to agree to abide by the inspectors' determinations. The Developer Owner and/or Village Builder of a Village, who constructs the improvements within a Village, shall, at its sole cost and expense, make all repairs to the improvements constructed by it which the inspectors deem necessary to cause the improvements (when they are conveyed to the Association) to comply substantially with the plans and specifications, as modified by any change orders, to be free from defects in materials and workmanship and to be in compliance with applicable governmental codes. Declarant shall have no responsibility or liability whatsoever associated with the construction of improvements by Developer Owners or Village Builders on Common Areas within Villages.

10. INSURANCE.

10.1 Authority to Purchase. The Board shall have the power and authority to purchase with Association funds such public liability, casualty, officers' and directors' liability and indemnity, workmen's compensation, and other insurance and such fidelity bonds as the Board shall deem necessary or appropriate from time to time. Policies shall be on such terms and conditions as the Board shall direct. All of these insurance policies and claims thereunder shall be administered by the Board. To the extent reasonably available, the Association shall maintain at least \$1,000,000 (combined limits) of insurance against liability incurred as a result of death or injury to Persons or damage to property.

10.2 Owner's Responsibility. Except as may be otherwise provided in a Tract Declaration, it shall be each Owner's responsibility to provide any insurance for the Owner's Lot

or Parcel, and any additions, improvements, furnishings, and personal property located within the Owner's Lot or Parcel, for the Owner's personal liability to the extent not covered by public liability insurance obtained by the Association, and such other insurance as the Owner desires. It shall also be each Owner's responsibility to determine the insurance coverages obtained by the Association so that the Owner may decide for himself what additional insurance, if any, the Owner desires to protect himself and his property.

10.3 Non-Liability of Association, Board and Officers. Neither the Association, nor any Board member, nor any officer of the Association, nor Declarant, nor any Related Entity or Village Builder or Developer Owner shall be liable to any Owner, Mortgagee, or any other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner, Mortgagee, and other Person to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner, Mortgagee, or other Person may desire.

10.4 Premiums. Premiums for insurance policies purchased by the Board shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or Parcel or its appurtenances, or of the Common Areas, by an Owner, or an Occupant of the Owner's Lot or Parcel, or the agent, employee or invitee of either, shall be assessed against the Owner as Benefited Assessment. Premiums for insurance policies for Village Common Areas shall be a Village Expense and shall be assessed against the Owners within the applicable Village as a Village Assessment.

10.5 Insurance Claims. The Association, through such Persons as the Board may delegate, is hereby irrevocably appointed and authorized, subject to the provisions contained in this Declaration, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board, at its discretion, may appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

10.6 Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any Insurance Trustee shall be held or disposed of for the Association and the Owners or other interested Persons, as their interests may appear.

11. DAMAGE AND DESTRUCTION OF COMMON AREAS.

11.1 Duty of Association. The Association shall restore and repair any partially or totally destroyed Common Areas, Village Common Areas, and Areas of Common Responsibility, or any improvements thereon, subject and pursuant to this Section 11. The proceeds of any casualty insurance maintained by the Association shall be used to the extent available for any restoration and repair, subject to the prior rights of Mortgagees whose interests may be protected by the policies.

11.2 Vote of Members. If the amount available from the proceeds of any insurance policies for restoration and repair, together with any uncommitted or unreserved capital of the Association, is less than the estimated cost of restoration and repair, the Common Areas, Village Common Areas, and Areas of Common Responsibility shall be replaced or restored unless a Majority of Members, at a special meeting held for that purpose, disapprove of the replacement or restoration. With respect to the restoration and repair of Village Common Areas, only the votes of the Members within the applicable Village will be considered in determining whether to replace or restore the Village Common Areas. If a Majority of the Members (or a Majority of the Members within the appropriate Village, as applicable) do not disapprove the proposed replacement or restoration, the Board may levy an assessment (a "Reconstruction Assessment") against each Owner and any Lots and Parcels of the Owner, and cause the damaged or destroyed areas to be repaired or restored. Any Reconstruction Assessment with respect to any Village Common Areas shall be assessed only against Lots and Parcels within the applicable Village. If a Majority of the Members (or a Majority of the Members of the appropriate Village, as applicable) disapprove of the repair or restoration of the damaged or destroyed areas as provided in the preceding sentence, the Common Areas or Village Common Areas so damaged or destroyed shall be cleared and landscaped for Common Area or Village Common Area use or other use determined by the Board and the costs of clearing and landscaping shall be paid from insurance proceeds (to the extent available).

11.3 Excess Insurance Proceeds. If any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Section 11, the Board, in its sole discretion, may retain the excess sums in the general funds of the Association or may distribute all or a portion of the excess to the Owners in the ratio that they would pay a Reconstruction Assessment under this Declaration, subject to the prior rights of Mortgagees whose interests may be protected by the insurance policies carried by the Association and subject to any restrictions under applicable law. With respect to excess insurance proceeds remaining after reconstruction of Village Common Areas pursuant to this Section 11 that are not distributed to the appropriate Village Owners, the Board may retain these sums in the Village's account or distribute them to Village Owners, as the Board elects. The rights of an Owner (or the Mortgagee of a Lot or Parcel) to any distribution shall be governed by the provisions of the Mortgage encumbering the Lot or Parcel.

11.4 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Section 11, shall be deposited by the Association in a separate bank account for those purposes, shall not be commingled with any other funds of the Association, and shall be deemed a contribution to the capital account of the Association by the Owners. Any Reconstruction Assessment shall be secured by the Assessment Lien.

11.5 Insurance Proceeds Trust. Upon receipt by the Association of any insurance proceeds, the Board may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Pima County, Arizona, designated by the Board as trustee (the "Insurance Trustee"). Any insurance proceeds shall be received, held, and administered by the Insurance Trustee subject to a trust agreement that is consistent with the provisions of this Declaration and that shall be entered into between the Insurance Trustee and the Board. Disbursements to contractors performing any repair or reconstruction upon the

Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Pima County, Arizona area.

12. EMINENT DOMAIN.

12.1 Definition of Taking. The term "Taking" shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas or Village Common Areas.

12.2 Representation in Condemnation Proceedings. The Owners hereby appoint the Association through such Persons as the Board may delegate, to represent all of the Owners in connection with any threatened Taking. The Board shall act in its sole discretion with respect to any awards made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

12.3 Award For Common Areas. Any awards received by the Association on account of the Taking shall be paid to the Board. The Board may, in its sole discretion, retain any award in the general funds of the Association (or in the Village's funds, if the Taking relates to Village Common Areas), expend the funds for restoration and repair of Common Areas or Village Common Areas, as applicable, or distribute all or any portion thereof to the Owners in the ratio they would pay a Reconstruction Assessment under this Declaration, or as their interests otherwise may appear. The rights of an Owner and the Mortgagee of the Owner's Lot or Parcel as to any distribution shall be governed by the provisions of the Mortgage encumbering the Lot or Parcel.

13. ARCHITECTURAL AND LANDSCAPE CONTROL.

13.1 Appointment of Architectural Review Committee. The Association shall have an Architectural Review Committee consisting of between three and five individuals, as specified from time to time by resolution of the Board. Declarant initially shall appoint the members of the Architectural Review Committee. Declarant shall retain the right to appoint, augment or replace all members of the Architectural Review Committee from time to time, until five years following the Transition Date. Thereafter, members of the Architectural Review Committee shall be appointed by the Board. Individuals appointed to the Architectural Review Committee, other than those appointed by Declarant, must satisfy any requirements set forth in the Architectural Design Guidelines. Declarant voluntarily may (but shall not be required to) permit Class A Members to appoint one or more members of the Architectural Review Committee at any time before the Transition Date. Notwithstanding anything to the contrary herein, prior to the Transition Date, the Declarant may elect to perform the functions of the Architectural Review Committee.

13.2 Architectural Design Guidelines. The Board shall establish reasonable procedural rules, regulations, restrictions, architectural and aesthetic standards, and design guidelines (the "Architectural Design Guidelines"), which the Architectural Review Committee may, from time to time, amend, repeal or augment with the consent of the Board. After the Transition Date (or after Declarant's voluntary relinquishment of control of the Architectural Review Committee pursuant to the second to last sentence of Section 13.1, if sooner), any change in the

Architectural Design Guidelines will be effective only if it is approved by Declarant (so long as Declarant, or any Related Entity Owner, owns any property subject to this Declaration or any of the Annexable Property in fee or beneficially). The Architectural Design Guidelines are incorporated in and shall be deemed to be a part of this Declaration and shall be binding on all Owners, Members, and other Persons as if expressly set forth in this Declaration; provided, however, that neither the provisions of this Section 13 nor the Architectural Design Guidelines shall apply to buildings and other structures or improvements constructed by Declarant or its agents or employees. Declarant's buildings and other structures may have an architectural style and present general aesthetics that are quite distinct from the architectural styles and aesthetics elsewhere in the Property or the Project. A copy of the current Architectural Design Guidelines shall at all times be a part of the Association's records. The Architectural Design Guidelines shall include, among other things, those restrictions, limitations and requirements set forth below:

13.2.1 Time Limits. Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Architectural Design Guidelines;

13.2.2 Compliance Procedures. Procedures for assuring conformity of completed improvements to drawings and specifications approved by the Architectural Review Committee;

13.2.3 Appeals. Procedures for appealing decisions of the Architectural Review Committee to the Board; and

13.2.4 Other. Such other limitations and restrictions as the Architectural Review Committee, in its reasonable discretion, may adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, but not limited to, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement, exterior artwork and works of art Visible from Neighboring Property, including, but not limited to sculptures and statues. Architectural Design Guidelines for any of the different types of residential products (for example, but without limitation, patio homes, cluster housing or housing on smaller Lots than typical single family Lots in the Property, and zero lot line units) may differ from the Architectural Design Guidelines for other products so long as each is suitable to the terrain, environment, and nature of the product and is not inconsistent with the general plan for the Property.

13.2.5 Subjective Criteria. SUBJECTIVE DETERMINATIONS AND/OR CRITERIA BEARING ON COMPATIBILITY WITH THE COMMUNITY-WIDE STANDARD, ARCHITECTURE, STYLE, DESIGN AND APPEARANCE GENERALLY, OTHER DWELLING UNITS, THE TERRAIN WITHIN THE PROPERTY OR VISIBLE FROM IT AND SUCH OTHER MATTERS AS THE ARCHITECTURAL REVIEW COMMITTEE MAY CONCLUDE, IN GOOD FAITH BUT IN THE EXERCISE OF ITS ABUNDANT DISCRETION, ARE RELEVANT OR APPROPRIATE TO A HARMONIOUS APPEARANCE AND LIFESTYLE WITHIN THE PROPERTY AND THE PROJECT.

Notwithstanding the foregoing, in no event shall any change in the Architectural Design Guidelines rescind or invalidate approvals previously given. Further, approvals given by Declarant prior to incorporation of the Association shall be binding upon the Architectural Review Committee and no additional review or approval by the Architectural Review Committee shall be required.

13.3 General Provisions.

13.3.1 Fees. The Architectural Review Committee may assess reasonable fees in connection with its review of plans and specifications.

13.3.2 Delegation of Authority. The Architectural Review Committee may delegate its responsibilities for reviewing plans and specifications, except final review and approval as may be required by the Architectural Design Guidelines, to one or more of its members or architectural consultants retained by the Architectural Review Committee. Upon any such delegation of responsibilities, the approval or disapproval of plans and specifications by the member or consultant shall be equivalent to approval or disapproval by the entire Architectural Review Committee.

13.3.3 Address. The address of the Architectural Review Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Architectural Design Guidelines or by written notice to Owners. The Architectural Review Committee's address shall be the place for the submittal of plans and specifications and the place where the current Architectural Design Guidelines shall be kept.

13.3.4 Declarant Exemption. The Architectural Design Guidelines shall not apply to, and nothing contained in this Section 13 shall be construed to prevent or impair in any way, any development, operation, construction or improvement by Declarant, any Related Entity or any other Person on property that is not within the Covered Property or is not made subject to this Declaration by annexation pursuant to Section 18.

13.3.5 Owners' Duties. The establishment of the Architectural Review Committee and the procedures in this Declaration for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots and Parcels as may otherwise be specified in this Declaration, any applicable Supplemental Declaration or Tract Declaration, the Bylaws or Association Rules.

13.3.6 Deadlines for Committee. The Architectural Review Committee shall approve or disapprove any drawings and specifications submitted to it in accordance with the Architectural Design Guidelines within such period as may be specified in the Architectural Design Guidelines.

13.3.7 Waivers. The Architectural Review Committee, in its discretion, from time to time, may waive compliance with the restrictions set forth in this Section 13 or any comparable restrictions set forth in any Supplemental Declaration, any Tract Declaration or the Architectural Design Guidelines; provided, however, following the Transition Date, any such waiver shall require the prior written approval of Declarant, so long as Declarant or any Related Entity owns any property within the Project in fee or beneficially.

13.4 Approval and Conformity of Plans and Specifications. Subject to the provisions of Section 4.2.24, no building, fence, wall, or other structure or improvement of whatever type that is Visible From Neighboring Property shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Parcel or a Lot, landscaping, grading or drainage thereof, including, but not limited to, the painting (other than repainting with the same color and type of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications that have been submitted to and approved by the Architectural Review Committee, in accordance with the Architectural Design Guidelines, as to harmony of external design and location in relation to surrounding structures and topography. It is understood and agreed by each Person having or acquiring an interest in the Property that the Architectural Review Committee will include aesthetic judgment in its decision-making process and approval of submitted plans will not be required simply because the plans satisfy stated objective requirements.

13.5 Non-Liability For Approval of Plans and Specifications. Plans and specifications shall be approved by the Architectural Review Committee as to style, exterior design, appearance, and location, and are not approved for engineering design or for compliance with zoning and building ordinances. By approving any drawings and specifications, neither the Architectural Review Committee nor any member thereof, nor the Association nor any Member thereof, nor the Board, nor any officer or director of the Association, nor Declarant, nor any Related Entity assumes any liability or responsibility for the drawings and specifications, or for any defect in any structure constructed from any drawings and specifications. Neither the Architectural Review Committee nor any member thereof, nor the Association nor any Member thereof, nor the Board, nor any officer or director of the Association, nor Declarant, nor any Related Entity shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans and specifications, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans and specifications, (iii) the development, or manner of development of any property within the Property, (iv) a change of the natural grade of any Lot or Parcel, or (v) the execution and filing of an estoppel certificate pursuant to the Architectural Design Guidelines (whether or not the facts in the estoppel certificate are correct) if the action, with the actual knowledge possessed by the person, was taken in good faith. Approval of drawings and specifications by the Architectural Review Committee, or the approval of any change in the size, configuration, or location of any building envelope, or a change in the natural grade of any Lot or Parcel is not, and shall not be deemed to be, a representation or warranty that the drawings, specifications or changes comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

13.6 Inspection and Recording of Approval. Any member or authorized consultant of the Architectural Review Committee, or any authorized officer, director, employee, or agent of the Association, may enter upon any Lot or Parcel, but not the interior of any occupied Dwelling Unit, in order to inspect improvements constructed or being constructed on the Lot or Parcel, or any changes in the grade of the Lot or Parcel, to ascertain that all improvements or changes have been or are being built or changed in compliance with the Architectural Design Guidelines and this Declaration, and any applicable Supplemental Declaration and Tract Declaration. Any entry pursuant to this Section 13.6 shall be at a reasonable time after reasonable notice to the Owner.

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14. RIGHTS OF MORTGAGEES.

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extent that the Assessment Lien secures any Subsequent Assessments. Neither the First Mortgagee nor a third-party purchaser shall be liable for any Prior Assessments after they acquire title to a Lot or Parcel through foreclosure or equivalent proceedings. Upon written request to the Association by the First Mortgagee or foreclosure purchaser, the Assessment Lien shall be released in writing by the Association to the extent it secures any Prior Assessments. Nevertheless, if the Owner against whom the Prior Assessment was made is the purchaser or redemptionor, the lien shall continue in effect and may be enforced by the Association or by the Board. Further, any Prior Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot or Parcel to the Association, and the Board may use reasonable efforts to collect all amounts from the Owner even after he is no longer the Owner of the Lot or Parcel. Any unpaid Assessments that are extinguished pursuant to this Section 14.2 may also be reallocated by the Board among all Owners as part of the Common Expenses. Any unpaid Village Assessments however, shall be reallocated only among the Owners in that particular Village. Except as above provided (and except for liens for taxes and other public charges that by applicable law are made prior and superior), the Assessment Lien shall be prior and superior to any and all charges, liens or encumbrances that in any manner may arise or be imposed on any Lot or Parcel.

14.3 No Personal Liability. A First Mortgagee shall not be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule, or regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters that are enforceable by prohibitory injunction or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 14.

14.4 Enforcement After Foreclosure Sale. An action to abate the breach of any of the covenants, conditions, restrictions, servitudes, and reservations in this Declaration or in any Supplemental Declaration or Tract Declaration, may be brought against any purchaser and its successors in interest even though the purchaser may have acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and even though the breach existed prior to the time the purchaser acquired an interest in the Lot or Parcel.

14.5 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any proceeding, may, but shall not be required to, exercise any or all of the rights and privileges of the Owner of the Lot or Property that is subject to the First Mortgage including, but not limited to, the right to vote as a Member of the Association in the place and stead of that Owner if the First Mortgagee or receiver gives the Association written notice of its claimed rights and such evidence as the Board may reasonably request demonstrating the existence of the claimed rights.

14.6 Subject to Declaration. At such time as a Mortgagee comes into possession of or becomes record Owner of a Lot or Parcel, the Mortgagee shall be subject to all of the terms and conditions of this Declaration and any applicable Supplemental Declaration and Tract Declaration including, but not limited to, the obligation to pay (and be personally liable for) all

Assessments and charges accruing thereafter, and the obligation to cure any physical conditions on the Lot or Parcel that constitute a default under or violation of this Declaration or the Architectural Design Guidelines in the same manner as any other Owner, whether or not the condition existed before the Mortgagee came into possession of or became the record Owner of the Lot or Parcel.

15. VILLAGES AND VILLAGE ASSOCIATIONS.

If any homeowners' or similar association is formed with respect to a Village or any other portion of the Property, the association's governing documents (including, but not limited to, any declaration similar to this Declaration) shall be void and of no force or effect unless: (i) the Board has granted its written approval of each governing document (if the sub-association is being formed by any Person other than Declarant); and (ii) each governing document, the property within the Village, the association, and the association's members are subject and subordinate to this Declaration, any applicable Supplemental Declaration and Tract Declaration, the Articles and Bylaws provided for herein, the Architectural Review Committee, the Architectural Design Guidelines, and all other rules and regulations of the Association.

16. EASEMENTS.

16.1 Blanket Easements and Utility Construction Easements. There is hereby created a blanket easement upon, across, over and under the Property (including all Lots, Parcels, Common Areas and Village Common Areas) for utilities, security systems, drainage and emergency vehicles of all types. This easement shall permit installing, constructing, replacing, repairing, maintaining, and operating all lines, systems, channels, conduits, structures and equipment, and providing all related services. Declarant, the Association, Village Builders, Developer Owners, and all utility providers and governmental authorities providing the services contemplated by this easement shall have the benefit of it. This easement shall not, however, be construed to permit construction, installation, or placement of facilities over, under, or through any Dwelling Unit. There is also hereby created a temporary easement of reasonable width on either side of the centerline of any utility (or similar) easement to allow for construction or installation of necessary equipment and facilities. This temporary easement shall expire when construction or installation is complete. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by Declarant or thereafter created or approved by the Association. This provision shall in no way affect any other recorded easements on the Property.

16.2 Use of Common Areas and Village Common Areas. Except for the use limitations provided in Section 16.3, each Owner shall have the nonexclusive right to use the Common Areas in common with all other Owners. The right to use the Common Areas shall extend to each Owner, Occupant, and the agents, servants, tenants, family members, and invitees of each Owner. Except for the use limitations in Section 16.3, each Owner of a Lot within a Village shall have the nonexclusive right to use the Village Common Areas within that Village in common with all other Owners within that Village. The right to use the Village Common Areas shall extend to each Owner or Occupant within the applicable Village, and the agents, servants, tenants, family members, and invitees of that Owner. The use of the Common Areas and Village

Common Areas as described in this Section 16.2 shall be subject to the provisions of this Declaration, any applicable Supplemental Declaration and Tract Declaration, the Articles, Bylaws, and the Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein.

16.3 Exclusive Use Rights. Certain portions of the Common Areas and Village Common Areas may be reserved by this Declaration, any Supplemental Declaration or Tract Declaration, a subdivision plat, or any amendment or supplement to any of them, or the Board, for the exclusive control, possession, and use by the Owner of a Lot or the Owners of more than one but fewer than all Lots. If an area described in the preceding sentence serves as access to and from two or more Lots, the Owners of the affected Lots shall have joint control, possession, and use of the portion of the area that reasonably serves the Lots. The exclusive use rights created in this Section 16.3 are subject to the blanket utility easement, maintenance, and architectural and landscape control provisions contained in this Declaration, to such reasonable rules and regulations with respect to possession, control, use, and maintenance as the Board may from time to time promulgate, and to the rights of Declarant and the Board under this Declaration. Easements are hereby created in favor of and running with each Lot having an area described in the first sentence of this Section 16.3 for the exclusive control and use of that area. Each Owner, by accepting title to a Lot, and each other Person acquiring any other interest in a Lot, by acquiring the interest, shall be deemed to have further ratified the easements and rights to exclusive use created by this Section 16.3.

16.4 Association Easement. There is hereby created a nonexclusive easement in favor of the Association for ingress and egress over all the Property (except the interiors of occupied Dwelling Units) for the purpose of enabling the Association and its contractors, employees, representatives, and agents to implement the provisions of this Declaration and any applicable Supplemental Declaration and Tract Declaration. The rights of access established in this Section 16.4 shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Lot or Parcel by its Owner and any Occupant. Every Lot and Parcel is also hereby subjected to an easement for overspray and runoff of water from any irrigation systems serving the Common Areas, Village Common Areas and any Areas of Common Responsibility. Under no circumstances will the Association or any officer, director, employee, or agent of the Association be responsible for any property damage or personal injury resulting from any overspray or from the operation of the irrigation systems serving the Common Areas, Village Common Areas or Areas of Common Responsibility.

16.5 Declarant Easement. There is hereby created a nonexclusive easement in favor of Declarant (and the employees, agents, invitees, licensees, contractors, and guests of Declarant), and appurtenant to portions of the Property and the Annexable Property (whether or not ever annexed or ever withdrawn from being Annexable Property) owned in fee or beneficially by Declarant or any Related Entity Owner for ingress and egress over all Common Areas and Village Common Areas, and to go over, under and across, and to enter and remain upon all Common Areas and Village Common Areas and all unoccupied Lots or Parcels for all purposes reasonably related to Declarant's rights and obligations under this Declaration, and any applicable Supplemental Declaration and Tract Declaration and to the development, management, administration, operation, maintenance, advertisement, and sale or rental of the

portions of the Property and the Annexable Property owned in fee or beneficially by Declarant or any Related Entity Owner.

16.6 Easements For Annexation and Other Property. Easements appurtenant to the Annexable Property are hereby created on, over and under the Common Areas and Village Common Areas (i) for ingress and egress and access to and from the various portions of those properties, (ii) for installing, constructing, replacing, repairing, maintaining, and operating all utilities and utility services (whether public or private), and (iii) for such other purposes as may be necessary or convenient to the permitted use and enjoyment of those properties.

16.7 Information Center Easement. Declarant shall have the right but not the obligation, from time to time, to erect, operate and maintain, on any property within the Project owned in fee or beneficially or leased by Declarant, or any Related Entity Owner, one or more information center(s), administrative office(s), and/or sales office(s) that are necessary or convenient for the administration, development, sale, resale, leasing or other marketing of property within the Project (each, an "Information Center"). There is hereby established an easement appurtenant to each Information Center over any Private Roads between the Information Center and all public streets or roadways adjacent to or serving the Project for the purposes of ingress, egress, utilities, and such other purposes as may be reasonably required for the full use and enjoyment, and the operation, repair, and maintenance of each Information Center, in any manner consistent with applicable zoning, and applicable laws and other requirements of governmental authorities having jurisdiction.

16.8 Easement For Encroachments. Each Lot and Parcel and the Common Areas and Village Common Areas shall be subject to an easement for encroachments including, but not limited to, encroachments of walls, ceilings, ledges, floors, eaves, and roofs (including scuppers) created accidentally by construction, settling, and overhangs, whether as originally designed or as constructed, or as created accidentally by discrepancies between a subdivision plat and the actual construction. If (i) any improvements to the Common Areas or the Village Common Areas actually encroach upon a Lot or Parcel or (ii) any improvements to a Lot or Parcel actually encroach upon any portion of another Lot or Parcel or upon the Common Areas or the Village Common Areas, as the Lots, Parcels, Common Areas, and Village Common Areas are shown on a subdivision plat, a map of dedication, or any similar recorded instrument, there shall be an easement for the encroachments (and for maintenance and repair of them) as long as the encroachments exist. If any encroaching improvements to a Lot or Parcel, to the Common Areas or the Village Common Areas are repaired, altered, or reconstructed, similar encroachments shall be permitted and an encroachment easement for the repaired, altered, or reconstructed improvements shall exist. Each Lot and Parcel and the Common Areas and the Village Common Areas shall also be subject to an easement for runoff (including any adjacent roof or other improvements constructed thereon) of rainwater or other precipitation from roofs, walls, and other improvements (including, but not limited to, driveways) created by construction, settling, and overhangs, whether as originally designed or as constructed, or as created by discrepancies between a subdivision plat and the actual construction. Owners and any other individuals or entities acquiring any interest in the Lots, Parcels or the Common Areas or the Village Common Areas shall be deemed to have acquiesced and agreed to the existence of any encroachments, runoff, and easements by accepting the deed or acquiring an interest in the Lot, Parcel, the Common Areas or the Village Common Areas by any other manner. Notwithstanding the

foregoing, in no event shall an easement for encroachments apply to any encroachment resulting from the willful or intentional disregard of applicable boundary lines.

16.9 Irrigation Easement. Every Lot is hereby subjected to a nonexclusive easement for overspray and run-off water from any irrigation systems serving the Common Areas or Areas of Common Responsibility. Under no circumstances will the Association, or any officers, directors, employees or agents of the Association, be responsible for any property damage or personal injury resulting from any overspray or from the operation of the irrigation systems serving the Common Areas or Areas of Common Responsibility.

16.10 Easements For Drainage. All Lots, Parcels, the Common Areas, and the Village Common Areas are hereby subjected to an easement for natural drainage of storm water runoff from other portions of the Property; provided, however, that no Person shall be entitled to alter the natural drainage patterns on any portion of the Property to materially increase the drainage of storm water onto adjacent portions of the Property or Project (or materially relocate its locations) without the consent of any Owners of the affected property and the Board.

16.11 Restoration and Repair. Any damage to a Lot, Parcel, the Common Areas or the Village Common Areas resulting from the exercise of any easement rights granted in this Section 16 that allow for entry on a Lot, Parcel, the Common Areas, or the Village Common Areas shall be promptly restored or repaired by, and at the expense of, the Person exercising the easement rights. If the Person causing damage is an Occupant, or the agent, guest or invitee of an Owner, the Owner shall be responsible for any required repairs. If the Person causing damage is the agent, guest, or invitee of the Association, the Association shall be responsible for any required repairs.

16.12 Contribution to Costs. If easements granted in this Section 16 are utilized to permit vehicular traffic to any areas that are not subject to this Declaration, the owner of the property benefiting from the vehicular access will enter into a reasonable agreement with the Association to share maintenance costs for the portions of the Property being used by the vehicular traffic pursuant to the easement. Any failure to contribute to costs or other default under such an agreement will result in a claim for economic compensation or the right to require specific performance.

16.13 Perimeter Wall Easement. Declarant may establish one or more perimeter wall easements (each a "Perimeter Wall Easement") from time to time by plat, Tract Declaration, or other recorded instrument, for walls or fences or other similar structures at the perimeter of the Property, a Village, or other similar locations.

16.14 Village Boundary Walls. If a wall is to be built on the boundary between Villages or between other portions of the Property being developed by different Developer Owners or Village Builders, a temporary easement shall exist to the extent required for initial construction of the boundary wall and a permanent non-exclusive easement shall exist to the extent required for the wall to remain in place. The Developer Owner or Village Builder first proceeding with development of its portion of the Property shall be entitled to construct the boundary wall, in a good and workmanlike and lien-free manner, in accordance with all applicable requirements of governmental authorities having jurisdiction and any applicable requirements under this

Declaration. The party constructing the boundary wall shall be entitled to reimbursement for one half of the costs reasonably incurred in constructing the boundary wall. Reimbursement shall be due from the Developer Owner or Village Builder whose land shares the wall within 30 days following delivery of a written request for reimbursement, accompanied by copies of paid invoices or other documentation reasonably demonstrating the cost of constructing the wall and payment of all such costs.

17. HABITAT PRESERVATION / CULTURAL RESOURCES.

17.1 Establishment of Preserve. In connection with development of the Property, Declarant has or shall set aside land (the "Preserve Land") to be protected from development activities for the purpose of preserving habitat for the Pima Pineapple Cactus. Preservation responsibilities shall be undertaken by the Association or another appropriate organization (either, being referred to herein generally as the "Conservancy"). The Conservancy expenses associated with the Preserve Land shall be borne by Owners in accordance with this Section 17.1.

17.1.1 Agreement to Make Conservancy Payments. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to make "Conservancy Payments" of \$6 per month for the period of Lot ownership, in accordance with this Section 17.1.

17.1.2 Calculation of Conservancy Payments. Conservancy Payments shall commence for each individual Lot when the Lot is first subject to Assessments under this Declaration. The obligation to make new Conservancy Payments shall expire for all Lots 20 years following the commencement of Assessments under this Declaration but, notwithstanding expiration of the obligation for new payments, each Owner of a Lot shall remain personally liable for payment of any Conservancy Payment obligations that arose prior to the expiration date.

17.1.3 Collection of Conservancy Payments. As a matter of convenience, the Association has agreed to collect the Owners' Conservancy Payments on behalf of the Conservancy. Each Owner shall pay to the Association the Owner's Conservancy Payment in monthly installments, unless otherwise determined by the Board, from time to time. Each installment shall be due and payable on the date that Assessments are payable, unless otherwise set forth in the written notice sent to Owners. It is anticipated, although not required, that the Association will elect to require payment of the Conservancy Payments at the same intervals that it requires payment of Regular Assessments. If the Association requires payment of the Conservancy Payments at the same intervals that it requires payment of Regular Assessments, Owners shall not be required to write two separate checks or otherwise make separate payments for Regular Assessments and Conservancy Payments.

17.1.4 Distribution of Conservancy Payments. After collecting the Conservancy Payments pursuant to Section 17.1.3, the Association will segregate and separately maintain the Conservancy Payments from Association funds until the Conservancy Payments are distributed to the Conservancy in accordance with an agreement between the Association and the Conservancy.

17.1.5 Failure to Make Conservancy Payments. In the event that any Owner does not pay the Owner's Conservancy Payment in accordance with this Section 17.1, the Association shall pay the amount of that Owner's Conservancy Payment to the Conservancy. The amount of that Owner's Conservancy Payment shall then become a Benefited Assessment levied against the Owner that failed to make the required payment, and the payment of that Benefited Assessment shall be secured by the lien established in Section 7.

17.2 Artifacts and Cultural Resources. Portions of the Property, including some Lots and Common Areas, may include artifacts and other cultural resources. Due to the cultural significance of these artifacts and other cultural resources, no Owner or other Person shall remove, sell, relocate, destroy, deface or otherwise alter any artifacts or other cultural resources located on the Property, including, but not limited to, artifacts or other cultural resources located on the Owner's Lot. Notwithstanding the foregoing, if permitted by applicable law, an Owner may relocate or otherwise alter artifacts and other cultural resources located on the Owner's Lot to the extent such objects interfere with the construction of improvements on the Owner's Lot, with the prior written consent of the Architectural Review Committee in accordance with the Architectural Design Guidelines. Nothing set forth in this Section 17.2 shall be deemed to limit Declarant's rights as set forth in Section 19. In addition to the above restrictions, artifacts and other cultural resources located on the Property may be subject to protection under federal, state or local laws, rules, regulations or ordinances from time to time, including, but not limited to 16 U.S.C. § 470(f).

18. ANNEXATION OF ADDITIONAL PROPERTY.

It is contemplated that additional real property will be annexed to and become subject to this Declaration as set forth in this Section 18. Declarant intends, but is not obligated, to annex some or all of the Annexable Property, provided, however, that no Annexable Property can be annexed unless it is owned by Declarant at the time of annexation or the express written consent to annexation by the record owner of the property being annexed is reflected in the public record at the time of annexation.

18.1 Annexations Without Approval. Declarant may elect to annex all or any portion of the Annexable Property to this Declaration in increments of any size whatsoever, or to annex more than one increment at any given time and in any given order by recording a Supplemental Declaration describing the property being annexed. Until the date that is the twentieth anniversary of the recording of this Declaration, Declarant may annex any of the Annexable Property to this Declaration without the vote of the Members and without notice to or approval of any holder, insurer, or guarantor of any Mortgage (including, but not limited to, Eligible Holders), or any other Person (other than the record owner of the land if the owner at the time of annexation is a Person other than Declarant). Although Declarant shall have the ability to annex additional property as provided in this Section 18, Declarant shall not be obligated to annex any property. No property shall become subject to this Declaration unless and until a Supplemental Declaration is recorded as provided in this Section 18 and takes effect.

18.2 Annexations With Approval. Declarant shall have the sole right (with the consent of the other owner(s) of the additional property if Declarant does not own the additional property) to annex additional property to this Declaration that is not part of the Annexable

Property, with the approval of a majority of a quorum of Members, by recording a Supplemental Declaration covering the property to be annexed.

18.3 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form that annexes additional real property to the plan of this Declaration and that incorporates by reference all of the provisions of this Declaration. It shall contain such other provisions as are set forth in this Declaration relating to Supplemental Declarations. Recordation of a Supplemental Declaration shall constitute and effectuate the annexation of the property described in the Supplemental Declaration (unless a later effective date is specified in the Supplemental Declaration) making the property subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association, and thereafter the property shall be part of the Property for all intents and purposes of this Declaration, and all of the Owners of Lots or Parcels in the annexed property shall automatically be Owners under this Declaration. A Supplemental Declaration and a Tract Declaration under Section 4.4 of this Declaration may be combined in a single instrument.

19. EXEMPTION OF DECLARANT FROM RESTRICTIONS.

Notwithstanding anything to the contrary in this Declaration, none of the covenants, conditions, restrictions, easements or other provisions in this Declaration or any Supplemental Declaration or Tract Declaration shall be construed or deemed to limit or prohibit any act of Declarant (and its successors and assigns), its employees, agents and contractors, or parties designated by it in connection with (a) the construction, administration, management, completion, sale or leasing of Lots, Parcels, Common Areas, Village Common Areas, the Property, the Annexable Property, or (b) the administration, management, development, or other activities with respect to facilities within the Project but outside of the Property. Without limiting the generality of this Section 19 in any way and notwithstanding anything to the contrary in this Declaration, (i) Declarant is expressly exempted from the provisions of this Declaration requiring submittals to or authorizations by the Architectural Review Committee, including, but not limited to, Section 4.2.1, (ii) Declarant shall have the right to erect, operate and maintain one or more administrative and sales offices on any portion of the Property owned beneficially or in fee, or leased, by Declarant or any Related Entity Owner (including, but not limited to, Lots), and (iii) neither the provisions of Section 13, nor the Architectural Design Guidelines, nor any comparable provisions in any Supplemental Declaration or any Village Declaration shall apply to buildings and other structures or improvements constructed by Declarant, any Related Entity Owner or their respective agents or employees. Buildings and other structures by Declarant or any Related Entity Owner may have an architectural style and present general aesthetics that are quite different from the architectural style and aesthetics elsewhere in the Property.

20. REMEDIES.

20.1 General Remedies.

20.1.1 By Association and Declarant. In the event of any default by any Owner, Occupant or other Person under the provisions of this Declaration, any applicable Supplemental Declaration or Tract Declaration, the Articles, Bylaws, Association Rules or Architectural Design Guidelines, the Association, and its successors or assigns, and its agents, and Declarant,

shall have each and all of the rights and remedies that may be provided for in this Declaration, any applicable Supplemental Declaration or Tract Declaration, the Articles, Bylaws, Association Rules or Architectural Design Guidelines, or that may be available at law or equity, and may prosecute any action or other proceedings against the defaulting Owner, Occupant or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and interest accrued thereon, and to sell the Lot as provided in this Section 20.1, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of the Owner. The proceeds of any such rental or sale shall first be paid to discharge litigation costs including, but not limited to, reasonable attorneys' fees, witness fees (including expert witness fees), costs, litigation-related expenses and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of charges and any unpaid Assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

20.1.2 By Aggrieved Owner. In addition to the foregoing provisions of this Section 20.1, but subject to the requirements of Section 21, any aggrieved Owner may enforce this Declaration if the Association fails or refuses to do so for an unreasonable time following receipt of a written demand for enforcement from the aggrieved Owner.

20.2 Expenses of Enforcement. All expenses, if any, of the Association and Declarant in connection with any action or proceeding described or permitted by this Section 20, including reasonable attorneys' fees, witness fees (including expert witness fees), costs and other litigation-related expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the defaulting Owner and shall be a Benefited Assessment against such Owner, and the Association shall have a lien as provided in Section 7 therefor. In the event of any such default by any Owner, the Association and Declarant, and the manager or managing agent of the Association, if so authorized by the Board, shall have the authority to correct the default and to do whatever may be necessary to correct the default, and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner as a Benefited Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Section 7. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association and Declarant.

20.3 Legal Action. In addition to any other remedies available under this Section 20, if any Owner (either by the Owner's conduct or by the conduct of any Occupant of the Owner's Lot or family member, guest, invitee or agent) violates any of the provisions of this Declaration, any applicable Supplemental Declaration or Tract Declaration, the Articles, Bylaws, Association Rules or Architectural Design Guidelines, as then in effect, the Association and Declarant shall have the power to file an action against the defaulting Owner or Member for a judgment or injunction against the Owner requiring the defaulting Owner to comply with the provisions of

this Declaration, any applicable Supplemental Declaration or Tract Declaration, the Articles, Bylaws, Association Rules and Architectural Design Guidelines, and granting other appropriate relief, including money damages.

20.4 Effect on Mortgage. Notwithstanding anything to the contrary herein, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

21. DISPUTE RESOLUTION.

21.1 Approval of Litigation. The Association shall not initiate or voluntarily participate in any litigation, arbitration, claim to regulatory authorities, or any other binding legal proceeding with respect to any matter affecting or arising from the Property ("Property Litigation") except upon compliance with the requirements of this Section 21.

21.1.1 Owner Consent. Before the Association incurs expenses or potential liabilities in connection with Property Litigation including, but not limited to, attorneys' fees, court filing fees and exposure for costs and fees of an adverse party, the Association must hold a meeting of the Owners and obtain the approval of Owners holding more than 75% of the total votes entitled to be cast by all Owners, excluding the vote of any Owner who would be a defendant in the proceedings.

21.1.2 Required Disclosures. If the Property Litigation arises from an alleged "Defect" (as defined in Section 21.3.1 below, the Association shall provide all Owners with at least the following information about the proposed Property Litigation not later than the time the vote of Owners is taken:

- (a) a reasonably detailed description of the alleged Defect;
- (b) a good faith description of any attempts to correct the alleged Defect by the person alleged to be responsible for it, and the opportunities provided to that person to correct the alleged Defect;
- (c) a certification from an architect or engineer licensed in the State of Arizona that the alleged Defect exists, along with a description of the scope of work necessary to cure the alleged Defect and a resume of the architect or engineer;
- (d) a good faith estimate of the cost to cure the alleged Defect;
- (e) the name and professional background of any attorney retained (or proposed to be retained) by the Association to pursue the claim against arising from the alleged Defect, and a description of the relationship between the attorney and member(s) of the Board or the Association's management company (if any);

(f) a description of the fee arrangement between the attorney and the Association;

(g) a good faith estimate of the attorneys' fees and expert fees and costs necessary to pursue the claim;

(h) a good faith estimate of the time necessary to conclude the action (including possible appeals);

(i) a good faith estimate of the fees and costs the Association may be required to pay to the other party in the event that the Association's claim is unsuccessful; and

(j) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and the Owners.

21.1.3 Litigation Funding. The costs of any Property Litigation shall be paid by the Association only with monies that are collected for that purpose by Benefited Assessment. The Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations.

21.1.4 Resale Disclosures. Each Owner shall notify prospective purchasers of any Property Litigation initiated by the Board.

21.1.5 Application of Funds. In the event that Property Litigation arising from an alleged Defect is successfully pursued, any recovery shall be applied (after payment of applicable attorneys' fees and other litigation-related costs) to curing the alleged Defect or repaying the Association for costs previously incurred in curing the alleged Defect. Any excess funds remaining after curing the alleged Defect shall be retained in the Association's reserve funds.

21.2 Exempt Proceedings.

21.2.1 Exempt Claims. The procedural requirements set forth in Section 0 above shall not apply to any proceedings initiated by the Association to (i) collect unpaid Assessments; or (ii) enforce a contract entered into by the Association with vendors providing services or materials to the Association. Property Litigation shall not be construed to mean litigation, arbitration, or other proceedings in which the Association is participating by reason of having been named a defendant.

21.2.2 Ordinary Course. Nothing in Section 21.1 shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (a) enforce this Declaration and related documents; (b) comply with the statutes or regulations related to the operation of the Association; (c) amend this Declaration and related documents, in accordance with their terms; (d) grant easements or convey Common Area as provided in this Declaration; or (e) perform the obligations of the Association as provided in this Declaration (so long as performance of those obligations does not include the commencement of litigation).

21.3 Right to Cure Alleged Defect. If the Association, the Board or any Owner or other person ("Claimant") claims, contends, or alleges that a "Defect" exists in any improvements within the Property including, but not limited to, the residential structures constructed on the Lots, the person that constructed the improvement shall have the right to inspect, repair and/or replace the alleged Defect as set forth herein.

21.3.1 Defect Defined. As used in this Declaration, Defect shall mean failure to construct or install improvements in accordance with approved plans and specifications, in accordance with applicable governmental requirements, in accordance with contractual obligations, in accordance with applicable covenants or aesthetic requirements, in accordance with standards of good practice in the applicable industry, using acceptable materials or procedures, in breach of applicable governmental, legal or contractual obligations, or otherwise contrary to the expectations of the Claimant.

21.3.2 Notice of Alleged Defect. Within 15 days after discovering any condition that will be alleged to be a Defect, a Claimant shall give written notice of the alleged Defect ("Notice of Alleged Defect") to the person or persons believed by the Claimant to be responsible for the alleged Defect. The Notice of Alleged Defect shall include a reasonably detailed description of the alleged Defect and any action the Claimant believes to be necessary to cure the alleged Defect.

21.3.3 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt of a Notice of Alleged Defect, the person who received the Notice of Alleged Defect shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter the affected portion of the Property for the purposes of inspecting and/or conducting testing and, if the person so chooses in its sole discretion, repairing and/or replacing the alleged Defect. Any agreement made in writing for repair, replacement or other curative action shall be enforceable against both parties to the agreement without requiring either party to again go through the notice and other procedures provided for in this Section 21.3 or to go through the negotiation and mediation procedures set forth in Section 21.4.1 below and Section 21.4.2 below.

21.3.4 Scope of Work; Indemnity. In conducting such an inspection, testing, repair and/or replacement, the person receiving the Notice of Alleged Defect shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Any person entering the property of a Claimant, or performing testing, repair and/or replacement pursuant to this Section 21.3, shall defend, indemnify and hold the Claimant harmless for, from and against all claims, demands, costs, losses, and liabilities of every kind and nature arising from exercise of the entry and curative rights provided for in this Section.

21.3.5 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section 21.3 shall be construed to impose any obligation on any person to inspect, test, repair, or replace any item or alleged Defect for which the person is not otherwise obligated under applicable law or other binding legal obligation. The right to enter, inspect, test, repair and/or replace an alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to any person except by a written document executed by that person.

21.4 Alternative Dispute Resolution. Any dispute, controversy, disagreement or claim of any kind or nature arising in any way from the Property, including, but not limited to, the physical condition, use, appearance, or operation of the Property or any portion of it, or agreements or other legally binding instruments or obligations pertaining to the Property or any portion of it (each, a "Dispute") shall be processed progressively by negotiation, mediation and arbitration in accordance with this Section 21.4, unless specifically exempted, if the Dispute is between or among (i) the Declarant or any builder (or the officers, directors, employees, brokers, agents, consultants, contractors, or subcontractors of either of them) and any Owner or the Association; or (ii) the Association and any Owner. This Section will apply to any such Dispute regardless of whether it involves theories based upon contract, tort, statute or other legal theory. No person bound by this Section 21.4 may commence legal proceedings of any kind including, but not limited to judicial and regulatory complaints, in lieu of complying with the procedures and requirements set forth herein. The procedures shall not apply to Disputes relating to the payment of any type of Assessment or to claims by any of the foregoing persons against third parties not listed above (unless the third party has agreed to comply with the procedures set forth in this Section 21.4).

21.4.1 Negotiation. Any person wishing to pursue resolution of, or a remedy for, a Dispute (the "Claimant"), must give written notice of the Dispute to the person or persons believed to be responsible for the circumstances causing the Dispute, or believed to be responsible for remedying those circumstances (in either case, the "Respondent"). The notice must set forth in reasonable detail the circumstances alleged to give rise to the Dispute and the remedy or other action sought by the Claimant. The Claimant must thereafter follow the procedures set forth in this Section 21.4.1.

(a) Opportunity to Meet. Following delivery of such a notice, the Respondent shall be afforded a reasonable opportunity to meet with or otherwise communicate with the Claimant for a discussion of the circumstances giving rise to the Dispute and possible resolution of the Dispute and an examination of any physical conditions or written instruments giving rise to the Dispute.

(b) Deadline for Resolution. If the Dispute is not resolved to the satisfaction of the Claimant and the Respondent by negotiation within 30 days following delivery of the original notice by the Claimant and the Claimant wishes to pursue the Dispute further, the Claimant shall give notice to the Respondent that mediation pursuant to Section 21.4.2 is required.

(c) Defect Disputes. If the Dispute involves an alleged Defect and the procedures set forth in Section 21.3 above have been followed, this Section 21.4.1 shall be deemed satisfied and Section 21.4.2 below shall become applicable.

(d) Enforcement of Agreements. Any written agreement by the Respondent and the Claimant entered into for the purposes of resolving the Dispute shall be enforceable against either party in accordance with the provisions of Section 21.5 below.

21.4.2 Mediation. The Claimant shall initiate mediation by submitting the Dispute to mediation by the American Arbitration Association (or any successor thereto or any

other independent entity providing similar services mutually accepted by the parties) pursuant to the commercial mediation procedures then in effect, as modified by this Section 21.4.2 (unless the parties otherwise agree). No person shall serve as a mediator in any Dispute in which the person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(a) Position Memoranda; Pre-Mediation Conference. Within 10 days after the selection of the mediator, each party to the Dispute shall be entitled to submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference, and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within 10 days following the deadline for submittal of memoranda to the mediator and shall conclude within 15 days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in Scottsdale, Arizona or such other place as may be mutually acceptable to the parties to the Dispute.

(b) Conduct of Mediation. The mediator may conduct the mediation in the manner the mediator believes to be appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute agree to obtain (and assume the expenses of obtaining) the expert advice as provided below. The mediator does not have authority to impose a settlement on any party to the Dispute. Upon termination of the mediation, the mediator shall notify the parties to the Dispute in writing of the date on which the mediation terminated.

(c) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(d) Parties Permitted at Sessions. Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator; provided, however, that consent shall not be required for attendance by representatives of any party's insurer to the extent that participation is required by applicable policies of insurance. There shall be no stenographic record of the mediation process.

(e) Expenses of Mediation. The expenses of witnesses for either side shall be paid by the party producing the witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless the parties to the Dispute otherwise agree. Each party to the Dispute shall bear its own attorneys' fees and costs in connection with the mediation.

(f) Enforcement of Agreements. Any written agreement by the Respondent and the Claimant entered into through mediation for the purposes of resolving the Dispute shall be enforceable against either party in accordance with Section 21.5 below.

21.4.3 Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the procedures described in Section 21.4.1 above and Section 21.4.2 above, the Claimant shall have 30 days following termination of mediation proceedings (as determined by the mediator in writing) to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 21.4.3. If the Claimant does not submit the Dispute to arbitration within 30 days after termination of mediation proceedings, the Claimant shall be deemed to have waived any claims related to the Dispute, and all other parties to the Dispute shall be released and discharged from any and all liability to the Claimant on account of the Dispute; provided, nothing herein shall release or discharge any party from any liability to persons who are not a party to the proceedings. An arbitration pursuant to this Section 21.4.3 shall not be combined with any other arbitration without the consent of all parties to this arbitration.

(a) Necessary Parties. The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No person shall be required to participate in the arbitration proceeding if (i) all parties against whom the person would have necessary or permissive cross-claims or counterclaims (a "Necessary Party") are not or cannot be joined in the arbitration proceedings, or (ii) the enforcement of this Section 21.4.3 would materially impair insurance coverage for the person that would have otherwise provided the person protection with respect to the Dispute.

(b) Opt Out. If any party to an arbitration determines in good faith that it cannot join a Necessary Party in the arbitration or that its insurance coverage applicable to the Dispute would be materially impaired, the party may elect not to participate in the arbitration and allow any claims against it to be determined by other legal proceedings. If a party makes such an election, it must give written notice of its election to all other parties in the arbitration. Within 10 days following receipt of such a notice, any other party to the arbitration that would (or reasonably might) be adversely affected by the absence of the party that elected not to participate may likewise elect not to participate in the arbitration by giving written notice to all other remaining parties. If any party wishes to contest whether a party electing not to participate in the arbitration is entitled to make that election, it shall commence a legal action seeking a judicial determination of the validity of the election and arbitration proceedings will be stayed until that issue is finally determined judicially. Any such judicial proceeding to determine the validity of an election not to participate in arbitration shall deal only with that issue and shall not be used for a determination of the issues being decided in the arbitration.

(c) Place. The arbitration proceedings shall be held in Scottsdale, Arizona, unless otherwise agreed by the parties and the arbitrator.

(d) Arbitrator. A single arbitrator shall be selected. The arbitrator shall have served as a judge of the Arizona Superior Court, the Arizona Court of Appeals, or the Arizona Supreme Court, by appointment of the Governor. The arbitrator shall be neutral and impartial

and shall not have any relationship to the parties or interest in the Property. The arbitrator shall not have served as mediator in the Dispute. The parties to the Dispute shall meet to select the arbitrator within 10 days after the Dispute is submitted to final and binding arbitration pursuant to Section 21.4.3. If an arbitrator resigns or becomes unwilling or unable to continue to serve as an arbitrator in the subject Dispute, a replacement shall be selected in accordance with this Section 21.4.3.

(e) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(f) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(g) Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of any property subject to the Dispute, including, but not limited to, destructive or invasive testing; and (vi) trial briefs. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(h) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(i) Final Award. THE DECISION AND AWARD WILL BE MADE BY THE ARBITRATOR WITHOUT A COURT TRIAL AND WITHOUT A JURY. Each party to the arbitration WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A JURY OR BY A COURT and agrees to accept the award of the arbitrator as final. The arbitrator shall decide all issues in the Dispute by strictly applying Arizona law, and this Section 21.4.3. Subject to the limitations imposed in this Section 21.4.3, the arbitrator shall have the authority to try all issues, whether of fact or law. The arbitrator shall render a final decision in writing no later than 60 days following the conclusion of the arbitration proceedings, or such longer period as the parties to the Dispute mutually agree in writing. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held if not Arizona.

(j) Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the commercial arbitration rules or any other provision of this Section 21.4.3, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages.

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22. LIMITATION ON DECLARANT'S LIABILITY.

Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting title to any portion of the Property and becoming an Owner, and each other Person acquiring an interest in the Property (including, but not limited to, any Mortgagee Eligible Holder), acknowledges and agrees that neither Declarant (including, but not limited to, any assignee of the interest of Declarant), nor any Related Entity (or any partner, shareholder, trustee, officer, director, principal, or similar Person holding an interest or position in any assignee of the interest of Declarant) shall have any personal liability to the Association, or any Owner, Member, Mortgagee Eligible Holder, or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Declaration, any Supplemental Declaration or Tract Declaration, the Association, or the Architectural Review Committee except to the extent of that Person's interest in the Property; and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of that Person.

23. TERM; TERMINATION.

23.1 Term. This Declaration shall be effective upon the date of its recordation and, as amended from time to time, shall continue in full force and effect until January 1, 2050. Thereafter, this Declaration shall continue (as amended from time to time) for consecutive periods of 25 years each, unless there is an affirmative vote, not more than 360 days prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, to terminate this Declaration by a vote of at least 90% of the Members at a duly held meeting of the Members, or without any meeting if all Members have been duly notified and if at least 90% of the Members consent in writing to the termination within the 360-day period.

23.2 Withdrawal by Declarant. This Declaration may be terminated and any subdivision may be withdrawn by Declarant without the approval or consent of any other Person if the action is taken before there are any Class A Members.

23.3 Termination. After there are Class A Members, this Declaration may be terminated at any time upon a vote in favor of termination by 90% of the Class A Members and with the consent of Declarant (so long as Declarant or a Related Entity Owner owns any property subject to this Declaration or any of the Annexable Property in fee or beneficially). Declarant may, but shall not be obligated to, release its consent rights by recorded instrument. Notwithstanding anything to the contrary in this Declaration, no vote to terminate this Declaration shall be effective unless and until the written consent to termination has been obtained, within a period of 180 days prior to the vote to 180 days after the vote, from the holders of recorded First Mortgages on 75% of the Lots and Parcels upon which there are recorded First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be recorded a Certificate of Termination, duly signed by the President or a vice president of the Association and attested by the secretary or an assistant secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration, as of the date of recordation of the Certificate of Termination (or such later date as may be specified in the Certificate of Termination), shall have no further force and effect, and the Association shall be dissolved.

24. AMENDMENT.

24.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" (or some other comparable title) that sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Amendments may be adopted at a meeting of the Members upon the approval thereof of two-thirds of the Class A Members or without any meeting if all Members have been duly notified and if two-thirds of the Class A Members consent in writing to the amendment. In all events, the amendment when adopted shall bear the signature of the President and shall be attested by the secretary, who shall verify that the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments, once properly adopted, shall be recorded and shall be effective upon recording in the Pima County Recorder's office or at such later date as may be specified in the amendment.

24.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration that is properly adopted will be completely effective to amend any and all provisions of this Declaration that may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

24.3 Required Approvals. Notwithstanding the provisions of the foregoing sections of this Section 24:

24.3.1 Consent Required by Other Sources. If this Declaration or any applicable provision of law requires the consent or agreement of all Members and/or all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to the action shall be approved by all of the Members and/or all Owners and/or all lienholders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Declaration or by law.

24.3.2 Consent Required Prior to Transition. Until the Transition Date, this Declaration may not be amended by the Members pursuant to Section 24.1 without the prior written consent of Declarant, which may be withheld for any or no reason.

24.3.3 Consent Required at all Times. The following provisions of this Declaration may not be amended at any time without the prior written consent of Declarant, so long as the Declarant is the owner or has the right to purchase any portion of the Project or the Annexable Property: Sections 1.1, 1.24, 1.37, 4.2.24, 5.5, 5.6, 7.19, 7.20, 8.4.6, 9, 13.1, 16.5, 17, 18.1, 19, 21, 22, this 24.3.3, 24.5, 24.6 and 26.

24.4 Notice of Modifications; Public Dedications. This Declaration is being recorded at a time when initial development is only planned in the area of the Covered Property, which constitutes a relatively small portion of the entire Project. It is contemplated that when and if additional property in the Project is annexed to this Declaration (some of which may have Land Use Classifications other than those described in this Declaration), Declarant will execute Tract

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24.6 Declarant's Right to Amendment. Notwithstanding anything in this Section to the contrary, Declarant shall, for so long as it possesses a Class B Membership, be entitled to unilaterally amend this Declaration to correct minor errors and omissions.

25.1 Notices. Notices to the Association provided for in this Declaration, the Bylaws, or Association Rules, shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice to all Owners. Except as otherwise specified in this Declaration, in a Board resolution, or the Bylaws, if applicable law, this Declaration, or a resolution of the Board requires notice of any meeting or of any action or proposed action by the Association, the Board, or any committee, to be given to any Owner or Occupant, then the notice requirement shall be deemed satisfied if notice of the action or meeting is published once in any newspaper in general circulation within the County or the Project. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

25.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions of this Declaration. Any exhibits referred to in this Declaration are incorporated as though fully set forth where the reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as set forth in this Declaration.

25.3 Severability. If any provision of this Declaration, any Supplemental Declaration or Tract Declaration, the Articles, Bylaws, Association Rules, or Architectural Design Guidelines, or any section, clause, sentence, phrase, or word, or the application thereof in any circumstance, is held invalid, then the validity of the remainder of this Declaration, the Supplemental Declaration or Tract Declaration, the Articles, Bylaws, Association Rules, or Architectural Design Guidelines, and of the application of that provision, section, sentence, clause, phrase, or word in any other circumstances, shall not be affected thereby, and the remainder shall be construed as if the invalid part were never included.

25.4 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then the provision shall continue until 21 years after the death of the survivor of the now living descendants of Arizona Senators John McCain and John Kyl.

25.5 Mortgage of Lots and Parcels. Each Owner shall have the right, subject to the provisions of this Declaration, to make separate Mortgages for its respective Lot or Parcel. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except its Lot or Parcel.

25.6 Power of Attorney. Unless otherwise specifically restricted by the provisions of this Declaration or a Supplemental Declaration or Tract Declaration, in any instance in which the Association is empowered to take any action or do any act including, but not limited to, actions or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association (acting through the Board) as their attorney-in-fact, as may be appropriate, for the purposes of taking those actions or doing those acts including, but not limited to, executing, acknowledging, and delivering any instruments or documents necessary, appropriate, or helpful for those purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming an Owner or a Member of the Association, by the acceptance of a deed for a Lot or Parcel, by signing a contract for purchase of a Lot or Parcel, or by succeeding in any other manner to the ownership of a Lot or Parcel, or any interest therein, or a Membership in the Association, each Owner and Member shall be deemed and construed to have ratified and expressly granted this power of attorney.

25.7 Gender. Masculine, feminine and neuter references herein each shall include the others, as the context requires.

25.8 Interpretation. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration and any Supplemental Declaration and Tract Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation shall be final, conclusive, and binding as to all Persons and property benefited or bound by its provisions.

25.9 References to Declaration in Deeds. Deeds to and instruments affecting any Lot or Parcel or any part of the Property may contain the provisions set forth in this Declaration by reference to this Declaration; but regardless of whether any reference to this Declaration is made in any deed or instrument, all of its provisions shall be binding upon the grantee-Owner or other person claiming through any instrument and their heirs, executors, administrators, successors and assigns as though set forth at length in the instrument.

25.10 Controlling Law. This Declaration, any Supplemental Declaration and Tract Declaration, the Articles, Bylaws, Association Rules, and Architectural Design Guidelines shall be subject to, and construed in accordance with, Arizona law.

26. DISCLAIMER OF REPRESENTATIONS: NO COVENANTS OR RESTRICTIONS:
ZONING AND PLAN.

26.1 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary in this Declaration, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that any land now owned or hereafter acquired by Declarant or any Related Entity Owner is or will be subjected to this Declaration, or that any land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if any land is once used for a particular use, the use will continue in effect.

26.2 No Express or Implied Covenants or Restrictions. Nothing in this Declaration shall create, or be deemed to create any express or implied covenants or restrictions with respect to any real property, including, but not limited to, any Annexable Property which has not been annexed pursuant to Section 18, or any property annexed to this Declaration for which a Tract Declaration has not been recorded.

26.3 Zoning and Plan. Each Owner, by accepting title to a Lot or Parcel and becoming an Owner, and each other Person, by acquiring any interest in the Property, acknowledges awareness that the Project is an extensive, multi-use project, the development of which is likely to extend over many years, and agrees, so long as the Person is the Owner of the Lot or Parcel, or holds any other interest in the Property, not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the property in Madera Highlands (other than within the Owner's or other Person's Village), or (b) changes in any conceptual or plan for property in Madera Highlands (other than within the Owner's or other Person's Village); provided, in either case, the zoning, use, density, or conceptual, development, or plan revision is or would be lawful (including, but not limited to, lawful by special use permit, variance, or the like) and is not inconsistent with what is permitted by this Declaration (as amended from time to time). Notwithstanding anything to the contrary in this Section 26.3, the provisions of this

Section 26.3 shall be enforceable only to the extent not in violation of any applicable provision of law.

27. VOTING DELEGATES/VOTING GROUPS.

The Board may establish a system of delegate voting in place of direct voting on issues by Owners. If the Board establishes a system of delegate voting, the following provisions of this Section shall apply.

27.1 Delegate Voting Definitions.

27.1.1 "Voting Delegate". The representative selected to cast votes for Owners within a Village on matters requiring a vote of the Association (except as otherwise provided in this Declaration, any applicable Supplemental Declaration or Tract Declaration, or the Bylaws). The term "Voting Delegate" shall include alternates acting in the absence of the designated Voting Delegate.

27.1.2 "Voting Group". One or more Villages whose Voting Delegates vote on a common slate of candidates for electing directors to the Board or, if the context so indicates, the group of Owners whose Lots comprise any such Villages.

27.2 Voting Delegate Authority. Unless otherwise expressly directed by the Owner, or unless otherwise expressly provided in this Declaration, the Voting Delegate may cast all votes for Class A Owners as the Voting Delegate, in its sole and absolute discretion, deems appropriate.

27.3 Percentage Requirements. When Voting Delegates are to vote on any matter, any provision of this Declaration, any applicable Supplemental Declaration or Tract Declaration, or of the Articles or Bylaws requiring a vote or consent by a specified percentage of the Class A Owners shall mean the vote or consent of the Voting Delegates representing the required percentage of Class A Owners.

27.4 Voting Delegates.

27.4.1 Election of Delegate. One Voting Delegate and one alternate Voting Delegate shall be elected from each Village by a Majority of Village Owners. Election of Voting Delegates shall be conducted for each Village and may be conducted at a meeting or by written ballot without a meeting, as the Board may determine. However, the election of a Voting Delegate and alternate for a Village shall be held at a meeting if at least 10% of the Village Owners so request in writing.

27.4.2 Conduct of Election. The Board shall call for the election of the Voting Delegate and alternate Voting Delegate from each Village within a reasonable amount of time after the first conveyance of a Lot in the Village to a Retail Purchaser (or following the Board's decision to implement delegate voting, for Villages in which sales to Retail Purchasers commenced earlier). Subsequent elections shall be held annually within 30 days of the same date. The candidate receiving the most votes shall be elected the Voting Delegate and the candidate receiving the next highest number shall be the alternate. The Voting Delegate and

alternate shall serve a term of one year and until a successor is elected. Any Owner in the Village may be elected the Voting Delegate or alternate. Any Owner in the Village may submit nominations or declare itself to be a candidate in accordance with procedures established from time to time by the Board. The Board may also establish such training and/or committee or other service requirements for candidates as the Board may deem necessary or desirable from time to time.

27.4.3 Removal from Office. Any Voting Delegate or alternate may be removed from office with or without cause at any time by a vote of not less than a Majority of Village Owners.

27.4.4 Prior to Election. Until the Board first calls for an election of a Voting Delegate and an alternate Voting Delegate for a Village (and thereafter as determined by the Board), the Village Owners may personally cast their own votes for any matter requiring the vote or approval of Voting Delegates under this Declaration, any applicable Supplemental Declaration or Tract Declaration, the Articles, or Bylaws.

27.4.5 Votes by Delegates. Except as otherwise provided in this Declaration, any applicable Supplemental Declaration or Tract Declaration, or in the Articles or Bylaws, all Voting Delegates shall cast all votes that they represent in the manner which they, in their sole and absolute discretion, deem appropriate. Any votes cast by Voting Delegates shall be deemed to be in accordance with their authority and any binding directions from Village Owners unless challenged at the time the votes are cast. If votes by a Voting Delegate are challenged by any Village Owner as being inconsistent with binding instructions from Village Owners on whose behalf the Voting Delegate is purporting to act, the Voting Delegate shall have the burden of proving to the satisfaction of the Board that the votes were cast in compliance with any binding instructions or other binding limitations on them, or else the challenged votes will not be counted for the purposes of determining an outcome (but may be counted solely for the purpose of satisfying any quorum requirements).

27.4.6 Authority of Alternate. An alternate Voting Delegate shall act in the absence or disability of the Voting Delegate. Alternates may attend meetings of the Voting Delegates but shall not be entitled to vote or participate unless the Voting Delegate is absent or otherwise disabled from acting.

27.5 Voting Groups.

27.5.1 Designation of Groups. Declarant may designate Voting Groups consisting of one or more Villages for the purpose of electing directors to the Board, in order to promote representation on the Board of Directors for various groups within the Property having dissimilar interests and to avoid having Voting Delegates who represent similar Villages prevent minority-view representation on the Board by electing the entire Board.

27.5.2 Number of Groups. The number of Voting Groups shall not exceed the total number of directors to be elected to the Board by the Class A Owners. Voting Delegates representing Villages within a Voting Group shall vote on a separate slate of candidates for

election to the Board, with each Voting Group entitled to elect the number of directors provided for in the Bylaws.

27.5.3 Creation of Groups Prior to Transition. Declarant may establish Voting Groups for any existing Villages prior to the Transition Date by recording an instrument in the official records of the County and giving notice to the Secretary of the Association prior to that date. Any instrument recorded pursuant to the preceding sentence may be amended by Declarant from time to time after it is recorded and prior to the Transition Date without the vote or consent of the Board or any other Person. After the Transition Date, Declarant shall retain the power to assign any new Village to an existing Voting Group or to a newly established Voting Group by making the assignment in the Tract Declaration at the time it is originally recorded for the new Village but shall have no further power to assign or reassign Villages existing prior to the end of the Transition Date.

27.5.4 Creation of Groups After Transition. After the Transition Date, the Board shall have the power to assign or reassign any Village existing on that date to a Voting Group by recording an instrument in the official records of the County following approval by a majority of the Board but without requiring the vote or consent of any other Person.

27.6 Prior to Creation of Groups. Until such time as separate Voting Groups are established, all Villages shall constitute a single Voting Group. After a Voting Group is established as provided above for any Village, all other Villages in the Property that have not been expressly assigned shall continue to constitute a single Voting Group.

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

DECLARANT:

MONTEREY HOMES ARIZONA, INC.,
an Arizona corporation

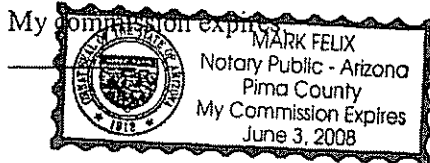
By: *Jeffrey R. Grobstein*
Its: Jeffrey R. Grobstein
Division President, Tucson

STATE OF ARIZONA)
) s.s.
County of Pima)

The foregoing instrument was acknowledged before me this 27th day of May, 2005, by Jeffrey R. Grobstein, the President-Tucson of Monterey Homes Arizona, Inc., an Arizona corporation, being authorized to do so on behalf thereof.

Mark Felix

Notary Public



11-100000-1

EXHIBIT "A"

LEGAL DESCRIPTION OF THE COVERED PROPERTY

BLOCKS 3, 7, 8 AND 9, OF THE FINAL BLOCK PLAT FOR MADERA HIGHLANDS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 8.

LOTS 1-99, INCLUSIVE, OF VILLAGE 11 AND ALL COMMON AREAS "F" LOCATED IN VILLAGE 11, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA RECORDED IN BOOK 59 OF MAPS, PAGE 65.

LOTS 1-40, INCLUSIVE, OF VILLAGE 12 AND ALL COMMON AREAS "D" AND "F" LOCATED IN VILLAGE 12, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

VILLAGE 13, AND ALL COMMON AREAS "D" LOCATED IN VILLAGE 13, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

LOTS 1-98, INCLUSIVE, OF VILLAGE 14 AND ALL COMMON AREAS "F" LOCATED IN VILLAGE 14, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

LOTS 1-52, INCLUSIVE, OF VILLAGE 16 AND ALL COMMON AREAS "F" LOCATED IN VILLAGE 16, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

LOTS 1-58, INCLUSIVE, OF VILLAGE 17 AND ALL COMMON AREAS "F" LOCATED IN VILLAGE 17, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

LOTS 1-68, INCLUSIVE, OF VILLAGE 18 AND ALL COMMON AREAS "D" AND "F" LOCATED IN VILLAGE 18, OF THE FINAL PLAT FOR MADERA HIGHLANDS:

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VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

LOTS 1-40, INCLUSIVE, OF VILLAGE 19 AND ALL COMMON AREAS "F" LOCATED IN VILLAGE 19, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

LOTS 1-33 INCLUSIVE, OF VILLAGE 20 AND ALL COMMON AREAS "F" LOCATED IN VILLAGE 20, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

LOTS 34-44, INCLUSIVE, OF VILLAGE 21, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

LOTS 1-69, INCLUSIVE, OF VILLAGE 22, TRACT "A" AND ALL COMMON AREAS "D", "E", "F" AND "G" LOCATED IN VILLAGE 22, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

LOTS 1-48, INCLUSIVE, OF VILLAGE 23 AND ALL COMMON AREAS "F" LOCATED IN VILLAGE 23, OF THE FINAL PLAT FOR MADERA HIGHLANDS: VILLAGES 11 THROUGH 14 AND 16 THROUGH 23, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 65.

THOSE PARCELS OF LAND PER THE PLAT OF MADERA HIGHLANDS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 8, DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND CONTIGUOUS WITH THE WESTERLY AND SOUTHERLY LINES OF BLOCK 11;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND CONTIGUOUS WITH THE EXTERIOR BOUNDARY LINES OF BLOCK 16;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND CONTIGUOUS WITH THE WESTERLY LINE OF BLOCK 17;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND
CONTIGUOUS WITH THE EXTERIOR BOUNDARY LINES OF BLOCK 19;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND
CONTIGUOUS WITH THE WESTERLY LINE OF BLOCK 20;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND
CONTIGUOUS WITH THE WESTERLY LINE OF BLOCK 21;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND
CONTIGUOUS WITH THE WESTERLY AND SOUTHERLY LINES OF BLOCK 23;

ALL THAT PORTION OF COMMON AREA "A" LYING SOUTHERLY OF MADERA
HIGHLANDS PARKWAY AND NORTHERLY OF THE NORTH LINE OF BLOCK 24;

ALL THAT PORTION OF COMMON AREA "A" LYING ADJACENT TO AND
CONTIGUOUS WITH THE WEST LINE OF BLOCK 25;

ALL THAT PORTION OF COMMON AREA "A" LYING NORTH OF AND ADJACENT TO
THE NORTH LINE OF BLOCK 19 AND SOUTH OF AND ADJACENT TO THE SOUTH
LINE OF BLOCK 16;

ALL THAT PORTION OF COMMON AREA "A" LYING EAST OF BLOCKS 16 AND 19
AND WEST OF THE WEST RIGHT OF WAY OF CAMPBELL AVENUE;

ALL THAT PORTION OF COMMON AREA "A" PER THE PLAT OF MADERA
HIGHLANDS, BEING A STRIP OF LAND 90 FEET WIDE, 45 FEET EACH SIDE OF THE
FOLLOWING DESCRIBED CENTERLINE;

COMMENCING AT THE NORTHWEST CORNER OF THE PLAT OF MADERA
HIGHLANDS, AS RECORDED IN BOOK 59 OF MAPS, PAGE 8, PIMA COUNTY
RECORDS, SAID POINT BEING AT THE INTERSECTION OF THE EAST RIGHT OF
WAY OF THE UNION PACIFIC RAILROAD WITH THE NORTH LINE OF THE SAN
IGNACIO DE LA CANOA LAND GRANT;

THENCE SOUTH 59 DEGREES 19 MINUTES 12 SECONDS EAST, ALONG THE NORTH
LINE OF SAID LAND GRANT, A DISTANCE OF 130.11 FEET TO THE TRUE POINT OF
BEGINNING;

THENCE SOUTH 19 DEGREES 21 MINUTES 26 SECONDS WEST, A DISTANCE OF
659.81 FEET;

THENCE SOUTH 10 DEGREES 07 MINUTES 48 SECONDS WEST, A DISTANCE OF
598.75 FEET;

THENCE SOUTH 05 DEGREES 30 MINUTES 35 SECONDS WEST, A DISTANCE OF
1804.00 FEET TO THE TERMINUS OF SAID CENTERLINE, THE SIDELINES OF SAID 90

FOOT STRIP TO INTERSECT AT ALL ANGLE POINTS;

TOGETHER WITH ALL THAT PORTION OF COMMON AREA "A" LYING WEST OF THE WEST RIGHT OF WAY OF CAMPBELL AVENUE AND EAST OF THE FOLLOWING DESCRIBED ARC:

COMMENCING AT THE NORTHWEST CORNER OF BLOCK 16;

THENCE SOUTH 85 DEGREES 31 MINUTES 18 SECONDS EAST ALONG THE NORTH LINE AND THE EASTERLY EXTENSION THEROF, A DISTANCE OF 74.29 FEET TO THE NORTHEAST CORNER OF COMMON AREA "B" WHICH LIES EAST OF AND ADJACENT TO SAID BLOCK 16, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE NORTHWESTERLY ALONG A 663.00 FOOT RADIUS CURVE CONCAVE TO THE EAST, WHICH IS 36.00 FEET WEST OF AND CONCENTRIC WITH THE WEST LINE OF CAMPBELL AVENUE, THROUGH A CENTRAL ANGLE OF 05 DEGREES 33 MINUTES 00 SECONDS (THE CHORD OF WHICH BEARS NORTH 26 DEGREES 24 MINUTES 09 SECONDS WEST, A DISTANCE OF 64.20 FEET) AN ARC LENGTH OF 64.23 FEET TO THE TERMINUS;

EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE OLD NOGALES-SAHUARITA ROAD RIGHT OF WAY.

EXHIBIT "B"

LEGAL DESCRIPTION OF THE ANNEXABLE PROPERTY

BLOCKS 1, 2, 4, 5, 6, 10, 15 AND 24 THROUGH 29, INCLUSIVE, AND COMMON AREAS "A", "B" AND "C", OF MADERA HIGHLANDS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 8;

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

THOSE PARCELS OF LAND PER THE PLAT OF MADERA HIGHLANDS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PIMA COUNTY, ARIZONA, RECORDED IN BOOK 59 OF MAPS, PAGE 8, DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND CONTIGUOUS WITH THE WESTERLY AND SOUTHERLY LINES OF BLOCK 11;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND CONTIGUOUS WITH THE EXTERIOR BOUNDARY LINES OF BLOCK 16;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND CONTIGUOUS WITH THE WESTERLY LINE OF BLOCK 17;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND CONTIGUOUS WITH THE EXTERIOR BOUNDARY LINES OF BLOCK 19;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND CONTIGUOUS WITH THE WESTERLY LINE OF BLOCK 20;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND CONTIGUOUS WITH THE WESTERLY LINE OF BLOCK 21;

ALL THAT PORTION OF COMMON AREA "B" LYING ADJACENT TO AND CONTIGUOUS WITH THE WESTERLY AND SOUTHERLY LINES OF BLOCK 23;

ALL THAT PORTION OF COMMON AREA "A" LYING SOUTHERLY OF MADERA HIGHLANDS PARKWAY AND NORTHERLY OF THE NORTH LINE OF BLOCK 24;

ALL THAT PORTION OF COMMON AREA "A" LYING ADJACENT TO AND CONTIGUOUS WITH THE WEST LINE OF BLOCK 25;

ALL THAT PORTION OF COMMON AREA "A" LYING NORTH OF AND ADJACENT TO THE NORTH LINE OF BLOCK 19 AND SOUTH OF AND ADJACENT TO THE SOUTH LINE OF BLOCK 16;

ALL THAT PORTION OF COMMON AREA "A" LYING EAST OF BLOCKS 16 AND 19 AND WEST OF THE WEST RIGHT OF WAY OF CAMPBELL AVENUE;

ALL THAT PORTION OF COMMON AREA "A" PER THE PLAT OF MADERA HIGHLANDS, BEING A STRIP OF LAND 90 FEET WIDE, 45 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE;

COMMENCING AT THE NORTHWEST CORNER OF THE PLAT OF MADERA HIGHLANDS, AS RECORDED IN BOOK 59 OF MAPS, PAGE 8, PIMA COUNTY RECORDS, SAID POINT BEING AT THE INTERSECTION OF THE EAST RIGHT OF WAY OF THE UNION PACIFIC RAILROAD WITH THE NORTH LINE OF THE SAN IGNACIO DE LA CANOA LAND GRANT;

THENCE SOUTH 59 DEGREES 19 MINUTES 12 SECONDS EAST, ALONG THE NORTH LINE OF SAID LAND GRANT, A DISTANCE OF 130.11 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 19 DEGREES 21 MINUTES 26 SECONDS WEST, A DISTANCE OF 659.81 FEET;

THENCE SOUTH 10 DEGREES 07 MINUTES 48 SECONDS WEST, A DISTANCE OF 598.75 FEET;

THENCE SOUTH 05 DEGREES 30 MINUTES 35 SECONDS WEST, A DISTANCE OF 1804.00 FEET TO THE TERMINUS OF SAID CENTERLINE, THE SIDELINES OF SAID 90 FOOT STRIP TO INTERSECT AT ALL ANGLE POINTS;

TOGETHER WITH ALL THAT PORTION OF COMMON AREA "A" LYING WEST OF THE WEST RIGHT OF WAY OF CAMPBELL AVENUE AND EAST OF THE FOLLOWING DESCRIBED ARC:

COMMENCING AT THE NORTHWEST CORNER OF BLOCK 16;

THENCE SOUTH 85 DEGREES 31 MINUTES 18 SECONDS EAST ALONG THE NORTH LINE AND THE EASTERLY EXTENSION THEROF, A DISTANCE OF 74.29 FEET TO THE NORTHEAST CORNER OF COMMON AREA "B" WHICH LIES EAST OF AND ADJACENT TO SAID BLOCK 16, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE NORTHWESTERLY ALONG A 663.00 FOOT RADIUS CURVE CONCAVE TO THE EAST, WHICH IS 36.00 FEET WEST OF AND CONCENTRIC WITH THE WEST LINE OF CAMPBELL AVENUE, THROUGH A CENTRAL ANGLE OF 05 DEGREES 33 MINUTES 00 SECONDS (THE CHORD OF WHICH BEARS NORTH 26 DEGREES 24 MINUTES 09 SECONDS WEST, A DISTANCE OF 64.20 FEET) AN ARC LENGTH OF 64.23 FEET TO THE TERMINUS;

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CONSENT BY LANCELOT MADERA, LLC

1. **Introduction Section.** The undersigned, LANCELOT MADERA, LLC, an Arizona limited liability company ("Lancelot") is the owner of certain property described on Exhibit "A" attached hereto (the "**Property**") known as Villages 3, 7, 8, 9 and 16 Madera Highland (the "**Project**"). MONTEREY HOMES ARIZONA, INC., an Arizona corporation ("**Monterey**") has the right to purchase Lots from Lancelot pursuant to that certain Option Agreement by and between Lancelot as optionor and Monterey as optionee dated May 27, 2005 (the "**Option Agreement**"). Project Owner hereby grants its consent to the terms and provisions of the Declaration (as defined below) and the recording thereof subject to the following provisions and conditions, which are deemed to modify the Declaration.

2. **No Representations/Warranties.** Lancelot makes no warranties or representations whatsoever that the plans presently envisioned for the development of the Project can or will be carried out or that the Property or any adjacent real property is or will be committed to, or developed for, a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. Project Owner makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenant contained in the Declaration.

3. **Project Owner's Consent.** Notwithstanding anything contained in the Declaration, as long as the Option Agreement is in effect the following shall apply:

(a) Any amendment to the plat or any replat of the Project or any modification of any improvement plans for infrastructure for the Project shall require the prior written consent of Lancelot.

(b) Monterey shall obtain Project Owner's written consent prior to voting to appoint any person other than an employee or member of Monterey or removing any member of the Board and replacing such member with any person other than an employee or member of Monterey. Monterey shall obtain the written consent of Lancelot prior to voluntarily surrendering its right to appoint and remove members of any Architectural C _____ pursuant to the Declaration.

(c) Monterey shall obtain Lancelot's prior written consent before voting to adopt or amend any rules, regulations or requirements applicable to the Project including, without limitation, architectural guidelines.

(d) So long as Lancelot owns any Lot, any amendment to the Declaration must be approved in writing by Lancelot.

(e) Monterey shall obtain Lancelot's written consent before voting to cause or allow the Association (as defined in the Declaration) to merge or consolidate with another corporation or association.

(f) Monterey shall obtain Lancelot's written consent before assigning any of its Declarant rights to any other party.

11-100000-1

4. **Additional Rights.** In addition to the foregoing, Lancelot shall be entitled to the benefit of (as though made directly to Lancelot) any and all releases, indemnifications, and limitations of liability, which are provided to any Declarant under the Declaration.

5. **Membership.** Notwithstanding anything to the contrary contained in the Declaration, as long as the Option Agreement is in effect and as long as Lancelot owns any Lots, Monterey may not, without the prior written consent of Lancelot, elect to terminate the Class "B" Membership or to convert the Class "B" membership to Class "A" membership.

MONTEREY HOMES ARIZONA, INC., an Arizona corporation

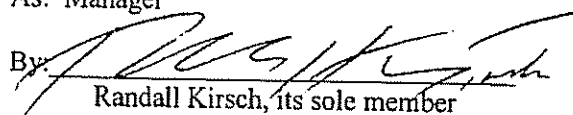
By: _____

Its: _____

LANCELOT MADERA, LLC, an Arizona limited liability company

By: **Lancelot Holdings, LLC,** an Arizona limited liability company

As: Manager

By: 
Randall Kirsch, its sole member

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2005, personally appeared before me _____, the _____ of Monterey Homes Arizona, Inc., an Arizona corporation, partnership, known to me to be the person whose name is subscribed to the foregoing Consent of Lancelot, and acknowledged that he executed the same.

Notary Public

My commission expires:

CONSENT BY LANCELOT MADERA, LLC

1. **Introduction Section.** The undersigned, LANCELOT MADERA, LLC, an Arizona limited liability company ("Lancelot") is the owner of certain property described on Exhibit "A" attached hereto (the "Property") known as Villages 3, 7, 8, 9 and 16 Madera Highland (the "Project"). MONTEREY HOMES ARIZONA, INC., an Arizona corporation ("Monterey") has the right to purchase Lots from Lancelot pursuant to that certain Option Agreement by and between Lancelot as optionor and Monterey as optionee dated May 27, 2005 (the "Option Agreement"). Project Owner hereby grants its consent to the terms and provisions of the Declaration (as defined below) and the recording thereof subject to the following provisions and conditions, which are deemed to modify the Declaration.

2. **No Representations/Warranties.** Lancelot makes no warranties or representations whatsoever that the plans presently envisioned for the development of the Project can or will be carried out or that the Property or any adjacent real property is or will be committed to, or developed for, a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. Project Owner makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenant contained in the Declaration.

3. **Project Owner's Consent.** Notwithstanding anything contained in the Declaration, as long as the Option Agreement is in effect the following shall apply:

(a) Any amendment to the plat or any replat of the Project or any modification of any improvement plans for infrastructure for the Project shall require the prior written consent of Lancelot.

(b) Monterey shall obtain Project Owner's written consent prior to voting to appoint any person other than an employee or member of Monterey or removing any member of the Board and replacing such member with any person other than an employee or member of Monterey. Monterey shall obtain the written consent of Lancelot prior to voluntarily surrendering its right to appoint and remove members of any Architectural C_____ pursuant to the Declaration.

(c) Monterey shall obtain Lancelot's prior written consent before voting to adopt or amend any rules, regulations or requirements applicable to the Project including, without limitation, architectural guidelines.

(d) So long as Lancelot owns any Lot, any amendment to the Declaration must be approved in writing by Lancelot.

(e) Monterey shall obtain Lancelot's written consent before voting to cause or allow the Association (as defined in the Declaration) to merge or consolidate with another corporation or association.

(f) Monterey shall obtain Lancelot's written consent before assigning any of its Declarant rights to any other party.

4. **Additional Rights.** In addition to the foregoing, Lancelot shall be entitled to the benefit of (as though made directly to Lancelot) any and all releases, indemnifications, and limitations of liability, which are provided to any Declarant under the Declaration.

5. **Membership.** Notwithstanding anything to the contrary contained in the Declaration, as long as the Option Agreement is in effect and as long as Lancelot owns any Lots, Monterey may not, without the prior written consent of Lancelot, elect to terminate the Class "B" Membership or to convert the Class "B" membership to Class "A" membership.

MONTEREY HOMES ARIZONA, INC., an Arizona corporation

By: _____

Its: _____

LANCELOT MADERA, LLC, an Arizona limited liability company

By: **Lancelot Holdings, LLC,** an Arizona limited liability company
As: Manager

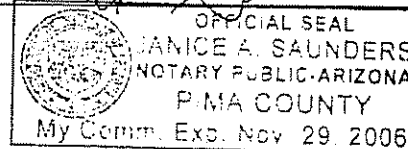
By: _____
Randall Kirsch, its sole member

STATE OF ARIZONA)
 Pima) ss.
COUNTY OF MARICOPA)

On this 27 day of MAY, 2005, personally appeared before me Jeffrey R. Grekschein, the President-Treasurer of Monterey Homes Arizona, Inc., an Arizona corporation, partnership, known to me to be the person whose name is subscribed to the foregoing Consent of Lancelot, and acknowledged that he executed the same.

My commission expires: 11-29-06

Notary Public



STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2005, personally appeared before me _____
_____, the _____ of Lancelot Madera, LLC, an Arizona
limited liability company, known to me to be the person whose name is subscribed to the
foregoing Consent of Lancelot, and acknowledged that he executed the same.

Notary Public

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