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DECLARATION OF HOMEOWNER BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HEARTLAND MASTER PLANNED COMMUNITY

DISCLOSURE: THIS DECLARATION AND THE PROJECT DOCUMENTS DESCRIBED IN THIS DECLARATION CONTAIN ALTERNATIVE DISPUTE RESOLUTION PROCEDURES THAT ARE APPLICABLE TO CLAIMS AND DISPUTES ARISING OUT OF OR UNDER THE DECLARATION AND OTHER PROJECT DOCUMENTS. THESE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES ARE CONTAINED IN ARTICLE XII OF THE DECLARATION AND ARTICLE VII OF THE BYLAWS (WHICH ARE PART OF THE PROJECT DOCUMENTS).

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DECLARATION OF HOMEOWNER BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HEARTLAND MASTER PLANNED COMMUNITY

This Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for Heartland Master Planned Community is made as of the Execution Date established at the end of this Declaration by MBC – Heartland, LLC, an Arizona limited liability company.

BACKGROUND

A. Declarant is the owner of certain real property ("**Master Plan Area**") that is generally depicted on the Site Plan and legally described on **Exhibit "A"** attached to this Declaration. The Master Plan Area is located in the City of Coolidge, County of Pinal, State of Arizona, and is the subject of the Development Agreement recorded on November 6, 2000, at Fee No. 2000-046328, Official Records of Pinal County, Arizona (as amended from time to time, the "**Development Agreement**").

B. Declarant desires to provide for the phased construction of a master plan community and planned area development consisting of, without limitation, detached single family residences, common areas, and recreational and/or educational facilities as described in this Declaration, the Development Agreement, or any Annexation Amendment.

C. Declarant includes in this Declaration and initially imposes these benefits, covenants, conditions, and restrictions upon only the lots and those common area tracts described on **Exhibit "B"**. The balance of the Master Plan Area may, but is not guaranteed to be, annexed into the Project and subjected to the Project Documents. As used in this Declaration, the terms "**Property**" or "**Project**" are synonymous, may be used interchangeably, and refer to only those portions of the Master Plan Area that have been subjected to the Project Documents. Subsequent to the date of this Declaration, additional phases of lots or common area tracts may be incorporated into the Project as provided below, whether through Parcel Declarations, Annexation Amendments, or a Supplemental Declaration.

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

DECLARATION

Accordingly, Declarant declares that the lots and common area tracts described on the Initial Qualified Plat, together with any other lots and common area tracts that, in the future, may be created by a Parcel Declaration and/or Qualified Plat and included in this Declaration as provided below, are to be held, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, and conveyed subject to the benefits, burdens, rights, reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges, duties, obligations, and liens (collectively referred to as "**covenants and restrictions**") that are described in the Project Documents. The covenants and restrictions are for the purpose of protecting the value, attractiveness, and desirability of the Property, and the covenants and restrictions will benefit, burden, and run with the title to the Property and will be binding upon all parties having any right, title, or interest in or to any part of the Property and their heirs, successors, and assigns. The covenants and restrictions will inure to the benefit of each Owner. The covenants and restrictions contained in the Project Documents are intended to be a comprehensive set of covenants and restrictions, and no covenants and restrictions should be implied from the Project Documents or the acts or omissions of Declarant. The Declarant further declares as follows:

ARTICLE I

DEFINITIONS

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

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

Section 1.03. "Areas of Association Responsibility" means those areas of the Project or adjoining property or rights-of-way that, while not part of the Common Area owned by the Association, are required to be maintained by the Association at the common expense of all Owners within the Project or all Owners within a particular Neighborhood. An area may not become an Area of Association Responsibility unless the Association's maintenance obligation is established either pursuant to: (i) this Declaration or any Qualified Plat; (ii) any written agreement with any utility provider or any Subsidiary Association; (iii) any zoning or development stipulation or requirement of the City; (iv) the terms and conditions of the Development Agreement; or (v) any license, permit, or written agreement in which the City, on the one hand, and the Association and/or the Declarant, on the other hand, have agreed for an increased level of maintenance or improvements to be established with respect to any Park Site (beyond the standards for all other public parks within the City or under the City's control). The Areas of Association Responsibility may be increased or decreased at the discretion of the Board.

Section 1.04. "Articles" means the Articles of Incorporation of the Association that have been or will be filed in the office of the Corporation Commission of the State of Arizona, as may be amended from time to time in the manner set forth in the Articles.

Section 1.05. "Assessment" (whether capitalized or not in this Declaration or the other Project Documents) means the Annual Assessments, Special Assessments, and Other Association Assessments described and defined in the Project Documents.

Section 1.06. "Association" means Heartland Coolidge Community Association, Inc., that has been or will be incorporated by Declarant and/or others as a nonprofit Arizona corporation, and the Association's successors and assigns.

Section 1.07. "Association Rules" means any rules and regulations adopted by the Association, as the rules and regulations may be amended from time to time.

Section 1.08. "Board" and **"Board of Directors"** means the Board of Directors of the Association.

Section 1.09. "Builder" means any person, other than Declarant, that: (i) owns a Parcel or one or more Lots within the Project; (ii) is engaged in the business of developing, constructing, leasing, and selling Lots and Detached Dwelling Units within the Project; and (iii) is designated as a **"Builder"** by a written and recorded instrument executed by Declarant (such as a Parcel Declaration). One or more Builders may be designated for each Parcel. Subsequent Owners other than the originally designated Builder or Builders for a Parcel may be designated as a Builder by the Declarant upon written request made by the new Owner so long as the new Owner otherwise satisfies the criteria for being a Builder, as described above.

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

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

Section 1.12. "Commercial Vehicles" means any of the following types of vehicles that are owned, leased, or used by an Owner of a Lot or any of Owner's Occupants: (i) commercial truck, government vehicle, tractor, tow truck, bulldozer, crane, ambulance, tour jeep, trolley, commercial delivery van, commercial car or pickup truck designated with business logos or advertising, semi, semitrailer, wagon, freight trailer, or similar commercial vehicles; or (ii) any other type of vehicles used in a trade or business that would ordinarily be considered a commercial vehicle.

Section 1.13. "Common Area" means all of the real property described on a Qualified Plat or Annexation Amendment as common area tracts for ownership and maintenance by the Association (and for which the Association has accepted responsibility to maintain by the Association's execution of the Qualified Plat or a separate consent to Qualified Plat), and all real property that may be annexed from time to time into the Project as additional common area tracts for ownership and maintenance by the Association. The **"Common Area"** does not include the real property described as individual Lots, public streets, or other publicly dedicated areas. The term **"Common Area"** also includes all structures, facilities, trails, playgrounds, tot lots, adult exercise equipment, furniture, fixtures, improvements, and landscaping, if any, located on the common area tracts, and all rights, easements, and appurtenances relating to the common area tracts owned by the Association.

Section 1.14. "Community-Wide Standard" means the standard of conduct, maintenance, use, or other activity prevailing at the Project or the minimum standards established under the Project Documents, whichever imposes a higher or greater standard. The Board will be responsible for establishing the Community-Wide Standard based on those objective and subjective factors that the Board deems relevant. The Community-Wide Standard may change or evolve as development progresses and the needs and desires of the Owners within the Project change.

Section 1.15. "Declarant" means MBC – Heartland, LLC, an Arizona limited liability company (**"MBC-Heartland"**). The term **"Declarant"** includes all successors and assigns of MBC-Heartland, if the successors or assigns: (i) acquire more than one undeveloped Lot from the Declarant for the purpose of resale; and (ii) record a supplemental declaration executed by the then-Declarant declaring the successor or assignee as a succeeding Declarant under this Declaration. The term **"Declarant"** does not include any Mortgagee.

Section 1.16. "Declaration" means this Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions and the covenants and restrictions set forth in this entire document (in entirety or by reference), as may be amended from time to time in the manner set forth below.

Section 1.17. "Design Guidelines" means any rules, regulations, or design guidelines that may be adopted or amended by the Architectural Committee.

Section 1.18. "Detached Dwelling Unit" means all buildings located on a Lot and used or intended to be used for Single Family Residential Use, including any garages, carports, open or closed patios, and basements, as originally constructed by the Declarant or any Builder.

Section 1.19. "Exempt Property" means the Commercial Tracts, Park Site, and the School Site, all of which will be exempt from payment of the Assessments described in the Project Documents and will be subject to the covenants and restrictions of the Project Documents only to the limited extent described in this Declaration (such as, for example, when and if the Park Site or School Site become Common Area, if at all).

Section 1.20. "Family Vehicles" means any domestic or foreign cars, station wagons, sport wagons, pickup tracks, vans, mini-vans, jeeps, sport utility vehicles, hybrid vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are used by the Owner of the applicable Lot or the Owner's Permittees for family, personal, and domestic purposes only and not for any commercial purpose. Notwithstanding the types of vehicles included within the definition of Commercial Vehicles, a **"Family Vehicle"** also includes the following types of vehicles that the Architectural Committee determines, in advance of its use within the Project, to be similar in size and appearance to smaller vehicles so as to be parked and maintained as a Family Vehicle: (i) non-commercial pickup trucks with a manufacturer's capacity rating of one ton or less with attached camper shells so long as the truck and camper shell are no more than eight feet in height, measured from ground level; and (ii) small motor homes of not more than eight feet in height and not more than 18 feet in length.

Section 1.21. "**Institutional Guarantor**" means, if applicable to the Project, a governmental insurer, guarantor, or secondary market mortgage purchaser such as the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Federal National Mortgage Association (FNMA) that insures, guarantees, or purchases any note or similar debt instrument secured by a First Mortgage. An Institutional Guarantor will be entitled to vote on those matters that require the approval or consent of the Institutional Guarantors if the Institutional Guarantor notifies the Association in writing of its desire to vote and its address for delivery of all Association notices.

Section 1.22. "**Land Banker**" means, with respect to any real property that has been included in the Property, the owner of fee title to a Parcel or group of Lots that is subject to an option in favor of a Builder, as the optionee/purchaser. There can be more than one Land Banker at the Project. Land Bankers are entitled to exercise the same rights and powers reserved to the applicable Builder under the Project Documents, as may be agreed to between Declarant, the Land Banker, and the applicable Builder, and are subject to the covenants and restrictions of the Project Documents.

Section 1.23. "**Lot**" means any one of the lots described on **Exhibit "B"** to this Declaration and includes any other lot that in the future may be included within the Project by a Parcel Declaration or an Annexation Amendment or Supplemental Declaration, as provided in this Declaration. The term "**Lots**" does not include any portion of the Master Plan Area that has not been subjected to the Project Documents through the recordation of a Parcel Declaration. The term "**Inventory Lot**" means any Lot within a Qualified Plat owned by the Declarant or any Builder (or over which a Builder has certain purchase option rights granted by a Land Banker) upon which a Detached Dwelling Unit has not been constructed completely. Completed construction will be evidenced by the issuance of a final certificate of occupancy or similar approval by the City. The term "**Completed Inventory Lot**" means a Lot within a Qualified Plat owned by Declarant or any Builder (or over which a Builder has certain purchase option rights) upon which a Detached Dwelling Unit has been completed, as evidenced by the issuance of a final certificate of occupancy by the City.

Section 1.24. "**Member**" means each and every Owner of a Lot.

Section 1.25. "**Mortgage**" (whether capitalized or not) means the consensual conveyance or assignment of any Lot, or the creation of a consensual lien on any Lot, to secure the performance of an obligation. The term "**Mortgage**" includes a deed of trust, mortgage, assignment, or any other agreement for the purpose of creating a lien to secure an obligation, and also includes the instrument evidencing the obligation. The term "**First Mortgage**" means a Mortgage held by an institutional lender that is the first and most senior of all Mortgages on the applicable Lot.

Section 1.26. "**Mortgagee**" (whether capitalized or not) means a person or entity to whom a Mortgage is made and will include a holder of a promissory note, a beneficiary under a deed of trust, or a seller under an agreement for sale. The term "**First Mortgagee**" means a Mortgagee that is the first and most senior of all Mortgagees upon the applicable Lot.

Section 1.27. "**Mortgagor**" means a person or entity who is a maker under a promissory note, a mortgagor under a mortgage, a trustor under a deed of trust, or a buyer under an agreement for sale, as applicable.

Section 1.28. "**Neighborhood**" means a subdivision of Lots within a Parcel that is designated by Declarant as a separate Neighborhood for purposes of voting, sharing Neighborhood Amenities, or receiving other benefits or services from the Association that are not provided to other Neighborhoods within the Project. There can be more than one neighborhood designated from each Parcel.

Section 1.29. "**Neighborhood Amenities**" means those portions of a particular Neighborhood (including any improvements and facilities located in those areas) that are reserved for the private use by all Owners and Owner's Occupants within that Neighborhood. Neighborhood Amenities may be owned by the Association or a Subsidiary Association. In some instances, Neighborhood Amenities, when owned but not maintained by a Subsidiary Association, may become Areas of Association Responsibility if the Association, in its sole discretion, agrees to be responsible for the repair and maintenance of the Neighborhood Amenities. Neighborhood Amenities may be designated or created by a Qualified Plat and/or Parcel Declaration.

Section 1.30. "Neighborhood Assessment" means an assessment made by the Association against the Owners within a particular Neighborhood or any Subsidiary Association applicable to a Neighborhood to cover Neighborhood Expenses or other special services rendered by the Association that benefit any Subsidiary Association or the Owners within one Neighborhood.

Section 1.31. "Neighborhood Expenses" means the actual or estimated expenses, as the case may be, that the Association actually incurs or expects to incur in the maintenance and repair of any Neighborhood Amenities either owned by the Association or for which the Association has agreed to be responsible to maintain and repair (i.e. Areas of Association Responsibility), including, to the extent applicable, a reasonable reserve for capital repairs and replacements and administrative charges, as authorized under the Project Documents.

Section 1.32. "Nonrecurring And Temporary Basis" means the parking of vehicles of any type either: (i) for the temporary purpose of loading and unloading items for permitted use on the Lot; (ii) for temporary parking by guests or invitees of an Owner that do not involve overnight parking; or (iii) for temporary parking of the vehicles of an Owner or the Owner's Permittees for cleaning or special events that do not involve overnight parking and that do not occur on a frequent or repetitive basis.

Section 1.33. "Owner" means the record owner, whether one or more persons or entities, of a fee simple legal title to any Lot; however, with respect to any Lots for which fee simple title is held by a Land Banker but which are subject to the purchase option rights described in an unrecorded option agreement between a Builder, as optionee/purchaser, and Land Banker, as optionor/seller, the Builder will be deemed the Owner for all purposes under the Project Documents. The term **"Owner"** includes the Declarant and all Builders but does not include those persons having an interest in a Lot merely as security for the performance of an obligation or duty (i.e., a mortgagee). In the case of Lots in which the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, §§ 33-801, et seq., the **"Owner"** of the Lot will be deemed to be the trustor. In the case of a Lot covered by an Agreement for Sale of Real Property as described in A.R.S., §§ 33-741, et seq., the buyer of the Lot will be deemed to be the **"Owner."** The term **"Owner's Occupants"** means all persons that reside on a full or part-time basis in the Detached Dwelling Unit located on the Owner's Lot (which, by way of example, could include the Owner's family members, tenants, or other permitted occupants). The term **"Owner's Permittees"** includes the Owner's Occupants and all guests, tenants, licensees, invitees, occupants, and agents that use the Owner's Lot or other portions of the Project (including Common Area) with the implied or express consent of an Owner.

Section 1.34. "Parcel" means any one of the parcels designated on the Site Plan as Units One through Six, inclusive, or as park/retention or school site parcels. Except as to the property legally described on **Exhibit "B"** to this Declaration, the Parcels initially are not subject to the Project Documents and are not part of the Property (nor are they intended to be Common Area). In the Declarant's sole discretion, any one or more of the Parcels (or any portion of any one or more of the Parcels) may be either: (i) subdivided through a Qualified Plat and annexed into the Property as Lots or Common Area pursuant to the terms of the Project Documents; (ii) dedicated and conveyed to the City as a Public Tract; (iii) permitted to remain as undeveloped agricultural land or as open space; (iv) sold and conveyed to someone other than the Declarant for development in accordance with the stipulations and requirements of the City; or (v) not included within the Property.

Section 1.35. "Parcel Declaration" means any recorded instrument executed by the Declarant identifying, among other things, those matters described in Section 2.05 below. Parcel Declarations will be used to include portions of the Master Plan Area within the Project and to subject the applicable Parcel described in the Parcel Declaration to the Project Documents. Parcel Declarations differ from Annexation Amendments or Supplemental Declarations in that the former are intended to cover areas that are part of the Master Plan Area whereas the later intended to include (annex) property other than the Master Plan Area into the Project.

Section 1.36. "Permitted Satellite Dishes and Exterior Antennas" means: (i) any antenna that is designed to receive direct broadcast service (DBS), including direct-to-home satellite services, of one meter or less in diameter; (ii) any antenna that is designed to receive video programming services via multi-point distribution services (MMDS) of one meter or less in diameter; (iii) an antenna that is designed to receive television broadcast signals; or (iv) any similar antenna or satellite dish, the residential use of which is protected under the Telecommunications Act of 1996 and any applicable rules, as either may be amended.

Section 1.37. "**Person**" (whether capitalized or not) means a natural person, a corporation, a partnership, a trust, or other legal entity.

Section 1.38. "**Personal Vehicles**" means any domestic or foreign cars, station wagons, sport wagons, pickup trucks, vans, mini-vans, jeeps, sport utility vehicles, alternate fuel vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are owned, leased, or used by the Owner of the applicable Lot or the Owner's Occupants.

Section 1.39. "**Project Documents**" means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules, the Design Guidelines, and, as applicable to each Neighborhood, a Qualified Plat and Parcel Declaration, as any or all of the foregoing may be amended from time to time. References to the Project Documents do not include references to any Subsidiary Declarations.

Section 1.40. "**Public Tract**" means any portion of the Property or any Parcel that may be dedicated and conveyed from time to time by the Declarant or any Builder to the City for use as a park (with active and passive activities), school, well site, or similar use, as required either by the Development Agreement or other stipulation or requirement of the City. Public Tracts are not part of the Property or Common Area but may be required to be maintained by the Association as Areas of Association Responsibility.

Section 1.41. "**Qualified Plat**" means any subdivision plat that is recorded in the Official Records of Pinal County, Arizona, that: (i) subdivides a Parcel into one or more Lots and tracts of Common Area; and (ii) has been prepared by any Builder and consented to in writing by the Declarant (during the Period of Declarant Control) and the Association. The "**Initial Qualified Plat**" is the Final Plat for Heartland Unit 1, recorded on April 13, 2004, in Cabinet E, Slide 061 (Recording No. 2004-026140), as re-platted in part on December 7, 2004, in Cabinet E, Slide 149 (Recording No. 2004-099989), Official Records of Pinal County, Arizona.

Section 1.42. "**Recreational Vehicle**" means any of the following types of vehicles or equipment that may be located or stored from time to time on an Owner's Lot: boats, snowmobiles, jet skis, all terrain vehicles, boat trailers, golf carts (whether licensed for street use or not), flatbeds, automobile trailers, pickup trucks with camper shells (whether or note equipped with sleeping quarters), pontoons, canoes, rafts, house boats, mobile homes, motor homes, portable camping trailers, park trailers, travel trailers, portable truck campers, dune buggies, go carts, or similar recreational vehicles or equipment.

Section 1.43. "**Screened From View**" means that the object in question is appropriately screened when viewed from abutting Lots, Common Area, and public and private streets by a gate, wall, shrubs, or other approved landscaping or screening devices. The Architectural Committee will be the sole judge as to what constitutes an object being Screened From View or appropriately screened, subject only to the right to appeal the Architectural Committee's decision to the Board under Section 7.07 below. An object may be Screened From View, in the opinion of the Architectural Committee, even though the object is Visible From Neighboring Property and may be seen through the approved screening.

Section 1.44. "**Shortfall**" means any shortage or deficiency in the Association's operating budget for any one budget year, as measured by determining the total expenses incurred during the budget year that have not been covered by the Annual or Special Assessments because of the reduced assessments paid by the Declarant and/or any Builder, all as more fully detailed in Section 4.06 below.

Section 1.45. "**Side Yard Parking Area**" means that portion of the Enclosed Side Yard of a Lot that has been designated by the Architectural Committee as a place for the parking of Commercial Vehicles, Recreational Vehicles, or Personal Vehicles. The plans and specifications for any Side Yard Parking Area must be approved in writing by the Architectural Committee prior to its installation or construction.

Section 1.46. "**Single Family**" means a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than four adult persons not all so related who maintain a common household in a Detached Dwelling Unit located on a Lot.

Section 1.47. "Single Family Residential Use" means the occupancy or use of a Detached Dwelling Unit and Lot by a Single Family in conformity with the Project Documents and the requirements imposed by applicable zoning laws or other state, county, or municipal rules, ordinances, codes, and regulations. Certain types of limited business use may be made of a Detached Dwelling Unit as established below in Article IX of this Declaration.

Section 1.48. "Site Plan" refers to the Community Master Plan prepared by Coe & Van Loo Consultants, Inc. dated May 3, 2004, as filed with the City for Tax Parcel No. 209-20-001A, as may be amended from time to time.

Section 1.49. "Subsidiary Association" means an Association created by the Declarant or a Builder for the purpose of administering and enforcing the provisions of any recorded Subsidiary Declaration and owning and maintaining any applicable Neighborhood Amenities, whether the association is a nonprofit corporation or any other legal entity. The term **"Subsidiary Association"** includes all successors and assigns of any Subsidiary Association.

Section 1.50. "Subsidiary Declaration" means any additional or separate declaration of covenants, conditions, and restrictions or similar instrument (other than this Declaration) that may be recorded by Declarant or a Builder with respect to all or any part of any Parcel. The term **"Subsidiary Declaration"** does not include this Declaration. Any Subsidiary Declaration will be subordinate at all times to this Declaration and will be interpreted in a manner consistent with the Project Documents.

Section 1.51. "Visible From Neighboring Property" means that an object is or would be clearly visible without artificial sight aids to a person six feet tall, standing on any part of the Property at proper grade adjoining the Lot or the portion of the Property upon which the object is located.

Section 1.52. "Yard" (whether capitalized or not) means all portions of the Lot other than the portions of the Lot upon which the Detached Dwelling Unit or an Ancillary Unit is constructed. The term **"Private Yard"** means the portion of the yard that generally is not Visible From Neighboring Property and is shielded or enclosed by solid walls, fences, and similar structurally enclosed items (typically, a back or enclosed side yard of the Lot). The term **"Open Yard"** means that portion of the Yard that is Visible From Neighboring Property, whether located in front of, beside, or behind a Detached Dwelling Unit (typically, a front yard or open side yard of a Lot). The term **"Enclosed Side Yard"** means the enclosed side yard portion of a Lot that is located behind, when viewed from the street in front of the Detached Dwelling Unit, the front wall of a Lot. The Architectural Committee will be the sole judge as to what constitutes a side yard and an Enclosed Side Yard in accordance with this Declaration. Generally, however, for the purposes of interpreting this Declaration, the term **"side yard"** (whether capitalized or not) will be used to describe that portion of a Lot located between the Detached Dwelling Unit and the side lot line and between the front and rear yard setback areas.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREAS

Section 2.01. General Governance. Except as to those portions of the Master Plan Area described in Section 2.09 below, Declarant intends to develop the Master Plan Area (or sell portions of the Master Plan Area for development by Builders) solely for Single Family Residential Use, subject to the covenants and restrictions established in the Project Documents. As Parcels within the Master Plan Area are sold or developed for Single Family Residential Use, Declarant intends to subject these Parcels to the covenants and restrictions of the Project Documents by the recordation of a Parcel Declaration, all in furtherance of a specific plan for development and all for the purpose of protecting the value, desirability, and attractiveness of the Master Plan Area. Once subjected to the Project Documents, all Parcels and Owners of the Parcels or Lots or Common Area within the Parcels also will be bound by the Project Documents. Nothing in the Project Documents or any Subsidiary Declaration will be construed to prevent Declarant from: (i) modifying, with approval of the City, any part of the Master Plan Area (including density, design, layout, development features, etc.) that has not been sold to a Builder or other Owner (other than Declarant); (ii) when requested by the City, dedicating portions of the Master Plan Area for public, municipal, or utility use; or (iii) conveying portions of the Master Plan Area for uses different than those initially or subsequently contemplated, so long as the change in use is consistent with any City approved master plan stipulations or otherwise approved by the City.

Section 2.02. Owners and Owner's Occupants Bound. All present and future Owners and Owner's Occupants of Parcels or Lots or tracts of Common Area within the Project are subject to the Project Documents, which will be binding on all Owners and Owner's Occupants whether or not specifically stated in any document or deed transferring an interest in the Parcel or Lot or tract of Common Area, as applicable.

Section 2.03. Owners' Easements of Enjoyment. Every Owner will have a non-exclusive right and easement of use and enjoyment in and to the Common Area, in common with all other persons entitled to use the Common Area under the terms and conditions of the Project Documents. Every Owner within an applicable Neighborhood will have a non-exclusive right and easement of use and enjoyment in and to any specifically designated Neighborhood Amenities for that Neighborhood, in common with all other Owners within the Neighborhood entitled to use the Neighborhood Amenities under the terms and conditions of the Project Documents and, if applicable, any Subsidiary Declaration. Neither the Common Area nor the Neighborhood Amenities, however, are intended to be used as a place of public accommodation. An Owner's right and easement to use and enjoy the Common Area and, as applicable, any Neighborhood Amenities, will be appurtenant to and pass with the title to every Lot and will be subject to the limitations and restrictions contained in the Project Documents, including the following rights in favor of the Association:

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

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

(c) ***Dedication/Grant.*** The right of the Association to dedicate or grant an easement (covering all or any part of the Common Area owned by the Association) to the City or any provider utility company for the purposes, and subject to the conditions, that may be established by, on the one hand, the City or provider utility company, and, on the other hand, the Declarant during the period of Declarant Control (as defined in Section 3.02) and, after the period of Declarant Control, by the Board. Except for those easements reserved in, or created by, or described in the Project Documents, and except for those conveyances described in Section 2.09 below, no dedications or easements may be created over all or any part of the Common Area unless the dedication or easement is approved at a duly called regular or special meeting by an affirmative vote in person or by proxy of two-thirds or more of the total number of eligible votes in each class of Members and unless the instrument evidencing the dedication or grant is executed by an authorized officer of the Association and recorded in the proper records in Pinal County; and

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

Section 2.04. Delegation of Use. Subject to and in accordance with the Project Documents, any Owner may delegate to the Owner's Permittees the rights of the Owner to use and enjoy the Common Area and any applicable Neighborhood Amenities.

Section 2.05. Parcel Declaration. As entire Parcels or portions of any Parcels within the Master Plan Area are readied for incorporation into the Project and development and/or sale, Declarant, through a Parcel

Declaration, will: (i) designate the Builder (if any) for the Parcel (and, without a specific designation of the Builder, there will be no Builder for the purposes of the Project Documents); (ii) designate the Parcel or any Neighborhoods that may comprise the Parcel by a specific number, letter, or number; (iii) identify the Land Banker, if any should then exist, for the Parcel; (iv) create the boundaries of any particular Neighborhood; and (v) describe any Neighborhood Amenities reserved for the private use by the Owners within a particular Neighborhood. At Declarant's option and with the consent of the applicable Builder, any Parcel Declaration recorded against a Parcel within the Master Plan Area also may describe the Qualified Plat applicable to the Parcel, any Areas of Association Responsibility, additional easements, or additional restrictions and obligations applicable to the Parcel.

Section 2.06. Residential Restrictions. The administration and enforcement of the Project Documents will rest with the Association (except to the limited extent provided below). The Project Documents are intended to apply to all Parcels (whether or not subdivided into separate Lots) that may become a part of the Project. Some of the Neighborhoods within the Project may be subject to additional covenants and restrictions imposed through a Subsidiary Declaration and administered by a Subsidiary Association. Nothing in the Project Documents precludes the Subsidiary Declarations from containing covenants and restrictions that are more restrictive than the Project Documents.

Section 2.07. Rights to Develop. The Declarant, the Builders, and the Association will have an unrestricted right of access over the entire Project to install, construct, maintain, and repair the Common Area and the Areas of Association Responsibility. Each Owner and Owner's Occupant (excluding the Declarant) specifically: (i) acknowledges that the Project is included in a master planned community, the development of which is likely to extend over many years; and (ii) except to the extent permitted through any public hearing process held by the City for zoning or development, agrees not to protest, challenge, or otherwise object to any changes in use or density of property outside of the respective Neighborhood in which the Owner works, resides, or holds an interest, or any changes to the Master Plan Area as it relates to property outside of the respective Neighborhood.

Section 2.08. Conveyance of Common Area. By a time no later than the date that an Institutional Guarantor first insures, guarantees, or purchases a loan with respect to a Lot within a Neighborhood, the Common Area within that Neighborhood will be conveyed by Declarant or the Builder, as applicable, to the Association by the delivery of a special warranty deed, free and clear of all monetary liens, but subject to the covenants and restrictions of the Project Documents. Absent a formal conveyance document for the Common Area, this Declaration and the recordation of a Qualified Plat should be considered a formal conveyance instrument for the Common Area as and when a conveyance is required under any applicable rules and regulations of an Institutional Guarantor. If the rules and regulations of an Institutional Guarantor do not apply to the Project, the Common Area will be conveyed by the Declarant or any applicable Builder to the Association in the condition and manner described above at a time determined by the Declarant (but never later than the expiration of the period of Declarant Control). The Common Area will be maintained by the Association at the common expense of the Owners, all as detailed in this Declaration, on the earlier to occur of the date the Common Area is conveyed to the Association or the Association accepts formal responsibility for the maintenance of the Common Area.

Section 2.09. Future Use of Certain Tracts. By its execution and recordation of this Declaration, Declarant advises all Owners of the matters established below.

(a) ***Commercial Tract.*** One or more areas located adjacent to or that are a part of the Master Plan Area are or may be designated as a **"Commercial Tract"** and are specially reserved for ownership and possible future conveyance by the Declarant to an affiliated or unaffiliated purchaser for use and development for those purposes as may be permitted under the City's applicable zoning designation for the Commercial Tract, as the zoning use or designation may be changed from time to time (described as the **"Permitted Commercial Use"**). Upon conveyance of the Commercial Tract by Declarant, the Commercial Tract will be deemed automatically withdrawn from (and will not be considered a part of) the Project or the Master Plan Area and the covenants and restrictions of the Project Documents; however, the conveyance of the Commercial Tract by the Declarant will not act to extinguish, terminate, or release the public utility easement created by any Qualified Plat over any of the Commercial Tracts. Until conveyed by Declarant, as described above, the Commercial Tract will be maintained by the Declarant for temporary use as landscaped or unlandscaped open space. The Commercial Tract will not become Common Area. Any temporary or interim use of the Commercial Tract, as provided above, will not give this Association or any

Owner any right, title, or interest in the Commercial Tract or any ability to limit or prevent the future use of the Commercial Tract for its Permitted Commercial Use. Any conveyance by Declarant of the Commercial Tract will not require the consent or approval of the Association or any Owners.

(b) ***Park Tracts***. Portions of the Master Plan Area may be dedicated and conveyed from time to time by the Declarant: (i) to the City (so long as accepted by the City) for use as a public park for those active and/or passive uses that may be determined or designated by the City and/or the Declarant; or (ii) to the Association for use as a private park with those active and/or passive uses as may be determined by the Board and approved, where necessary, by the City. These areas will be referred to as the "**Park Site**" irrespective of whether conveyed to the City or the Association. The designation of any portion of a Parcel as a Park Site on any Qualified Plat does not necessarily mean the area has been unconditionally dedicated as a public park or accepted for maintenance as a private park. A Park Site may be dedicated or created with those conditions and/or those reversionary interests as may be created by the Declarant, including the reservation of the right of the Association to enter upon and maintain the Park Site should the City fail to properly maintain the areas consistent with the Community-Wide Standard. To the extent any Park Site reverts in ownership to the Declarant, the Declarant reserves the right to use the reverted areas for any purpose consistent with the Project Documents and the requirements of the City. Notwithstanding anything to the contrary in the Project Documents or any Qualified Plat, the Park Site, when finally and unconditionally dedicated to the City, will not be subject to (or burdened by) any landscape and/or open space easement described in any Qualified Plat or Declaration, but will remain subject to the public utility and other infrastructure easements described in Article X below. Until any Park Site has been dedicated and conveyed and accepted for maintenance by the City, any Park Site will be maintained by the Association as a public park, commencing with the date the Association commences its maintenance of the Common Area, as an Area of Association Responsibility for temporary use as landscaped open space, soccer fields, ball fields, tot lots, and the like, unless the maintenance of the Park Site is otherwise dealt with under any joint maintenance and/or development agreement between the Declarant, any Builders, and others. The Park Sites will not become Common Area unless Declarant specifically designates all or part of the Park Sites as Common Area through any Annexation Amendment. Any temporary or interim use of the Park Sites as an Area of Association Responsibility, as provided above, will not give the Association or any Owner any right, title, or interest in either of the Park Sites or any ability to limit or prevent the future use of the Park Sites for a public park or any other use reserved by the Declarant, as established above. Any dedication or conveyance of a Park Site will not require the consent or approval of the Association or any Owners.

(c) ***School Site***. Portions of the Master Plan Area may be dedicated and conveyed from time to time by the Declarant to the City or any applicable school district for use as a public school (each a "**School Site**") for those active and/or passive uses that may be determined or designated by the City and/or the Declarant. The designation of any portion of a Parcel as a School Site on any Qualified Plat does not necessarily mean the area has been unconditionally dedicated as a public school. A School Site may be dedicated or created with those conditions and/or those reversionary interests as may be created by the Declarant. To the extent any School Site reverts in ownership to the Declarant, the Declarant reserves the right to use the reverted areas for any purpose consistent with the Project Documents and the requirements of the City. Notwithstanding anything to the contrary in the Project Documents or any Qualified Plat, the School Site, when finally and unconditionally dedicated, will not be subject to (or burdened by) any landscape and/or open space easement described in any Qualified Plat or Declaration. Until dedicated, as described above, the School Site will be maintained by the Association, commencing with the date the Association commences its maintenance of the Common Area, as an Area of Association Responsibility for temporary use as landscaped open space, unless the maintenance of the School Site is otherwise dealt with under any joint maintenance and/or development agreement between the Declarant, any Builders, and others. The School Site will not become Common Area unless Declarant specifically designates all or part of the School Site as Common Area through any Annexation Amendment. Any temporary or interim use of the School Site as an Area of Association Responsibility, as provided above, will not give the Association or any Owner any right, title, or interest in either of the School Site or any ability to limit or prevent the future use of the School Site for a use as a school or any other use reserved by the Declarant, as established above. Any dedication or conveyance of a School Site will not require the consent or approval of the Association or any Owners.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

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

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

(b) ***Class B***. The Class B member will be the Declarant. The Declarant will be entitled to cast a number of votes equal to three times the Unsold Lots. The "**Unsold Lots**" equals the number of Projected Lots less those Lots owned by Class A or Class C members, collectively. The "**Projected Lots**" will be deemed to be 2500 Lots, unless the master plan is amended to include additional Lots and/or additional Lots are added through an Annexation Amendment. The Class B membership will cease and be converted to Class A membership upon the happening of any of the following events, whichever occurs earlier:

(i) Four months after the date when the total votes outstanding in the Class A membership first equals or exceeds the total votes outstanding in the Class B membership, unless, prior to the end of the four month period, Declarant records an Annexation Amendment annexing additional property into the Project as additional Lots and, as a result, based on a then-current analysis, Class A membership no longer equals or exceeds the total votes outstanding in the Class B membership;

(ii) The date that is 10 years after the date of the close of escrow on the first Lot (not Parcel) sold by Declarant or any Builder to a Class A member; however, if, and to the extent any additional property is annexed from time to time into the Project as additional Lots pursuant to an Annexation Amendment, this outside date will be extended automatically to a date that is 3 years after the date of the last annexation into the Project; or

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

Upon the conversion of Declarant's Class B membership to Class A membership, the Declarant will be entitled to cast only one vote for each Lot owned by the Declarant. The period of time during which Class B membership is in existence will be referred to in this Declaration as the period of "**Declarant Control**." For the

purposes of Section 3.02(b)(i) above, the number of votes will be based upon the Lots initially covered by this Declaration, plus all Lots that in the future may be included in or covered by this Declaration as provided in this Declaration, minus all Lots withdrawn from this Declaration, if any.

(c) ***Class C.*** The Class C members will be the Builders. Class C members will be entitled to cast: (i) as to each Neighborhood that has been subdivided through a Qualified Plat, three votes for each Lot owned by the Builder (or over which a Builder has certain purchase option rights) in the applicable Neighborhood; or (ii) as to any Parcel, the number of votes designated in the Parcel Declaration. Class C membership with respect to any particular Neighborhood will be converted into Class A membership when the total votes outstanding in the Class A membership with respect to a Neighborhood first equals or exceeds the total votes outstanding in the Class C membership with respect to a Neighborhood. Upon conversion of Builder's Class C membership to Class A membership for a particular Neighborhood, the Builder will be entitled to cast only one vote for each Lot owned by the Builder in the Neighborhood.

(d) ***Designated Voting Representative.*** The votes attributable to Class A, Class B, and Class C Members will be cast by and through Designated Voting Representatives, as more fully described in the Articles and Bylaws.

Section 3.03. Transfer of Control. When the period of Declarant Control ends, the Class A Members will accept control of the Association from the Declarant and full responsibility for the operation of the Association and administration of the Property as provided in the Project Documents, and neither the Declarant nor any Builder nor any Land Banker will have further responsibility for any future acts or omissions with respect to the operation of the Association and administration of the Property. Any claims of the Association or any Owners against the Declarant, any Builder, or any Land Banker for acts or omissions of the Declarant, any Builder, or any Land Banker with respect to the operation of the Association or the administration of the Property (including the availability or sufficiency or any reserves) arising during the period of Declarant Control will be waived, unenforceable, and void if not commenced within one year from the expiration of Declarant Control.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.01. Lien and Personal Obligation for Assessments.

(a) ***Creation of Lien.*** By accepting a deed for a Parcel or Lot (whether or not expressed in the deed or conveying instrument) for which a Parcel Declaration has been recorded or otherwise becoming an "**Owner**", each Owner is deemed personally to covenant and agree to be bound by all covenants and restrictions of the Project Documents and to pay to the Association: (i) the Annual Assessments described in Section 4.02 below; (ii) the Special Assessments described in Section 4.04(a) below; (iii) any Neighborhood Assessment to the extent applicable to Owners within a Neighborhood; (iv) an amount sufficient to, on demand, indemnify and hold harmless the Association for, from, and against all obligations undertaken or incurred by the Association on account of the special services or benefits requested by any Owner, any group of Owners, or Subsidiary Association and to repay the Association for all expenditures on account of the special services or benefits requested by an Owner, any group of Owners, or Subsidiary Association; (v) an amount sufficient to reimburse the Association for the cost of performing any obligation of an Owner or Subsidiary Association under the Project Documents that the Owner or Subsidiary Association has failed to timely pay or perform; (vi) an amount sufficient to, on demand, indemnify and hold harmless the Association for, from, and against all monetary damages or penalties imposed on the Association arising out of the failure of the Association to disclose, or to accurately disclose, the information required under A.R.S. § 33-1806 where the Owner knew or should have known of the inaccuracy of the information or where the Owner was under a contractual or other duty to disclose the information not provided (or not accurately provided) by the Association; and (vii) all other assessments or other similar charges that may be fixed, established, and collected from time to time as provided in this Declaration or the other Project Documents. The amounts described above, together with all accrued interest, court costs, attorney fees, late fees, penalties, fines, and all other expenses incurred in connection with the collection of the amounts described above, whether or not a lawsuit or other legal action is

initiated, are referred to collectively in the Project Documents as an "**Assessment**" (whether capitalized or not). Except as otherwise established in A.R.S. § 33-1807, the Association, by the recordation of this Declaration, is granted a perfected, consensual, and continuing lien upon the Lot against which the assessment is made or has been incurred for the payment of all assessments, and the further recordation of any claim of lien or notice of lien is not required for perfection or enforcement of the Association's lien for the assessments.

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

(c) ***Exempt Property.*** No Exempt Property will be subject to any assessments.

(d) ***Charge for Assessments.*** All assessments payable to the Association may be charged to and collected from either: (i) each applicable Subsidiary Association (who, in turn, will be responsible for collection of the assessments from the Owners within the Neighborhood); or (ii) each Owner within the Project through a direct assessment. The Board will determine who will be assessed, and the Board reserves the right to change or switch the assessed parties to and from the Subsidiary Associations and the Owners.

Section 4.02. Purpose of Annual Assessments.

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

(b) ***Assessments Against Neighborhoods.*** To the extent the Neighborhood Amenities are not maintained by a Subsidiary Association, the cost for the maintenance and repair of the Neighborhood Amenities will be assessed as a Neighborhood Assessment, and the cost will be assessed to all Owners within the affected Neighborhoods based on Lots owned. All assessments made to a Neighborhood by the Association may be made as Annual Assessments, as that term is used in the Project Documents. Even though the payment of the assessments is a personal obligation of each Owner, all Annual Assessments attributable to the cost of maintenance or repair of Neighborhood Amenities in a particular Neighborhood (i.e., those attributable to a Neighborhood Assessment) will be collected only from the Owners of the Lots located within that Neighborhood.

Section 4.03. Increases in Assessments.

(a) ***Base Year Assessments.*** Prior to the conveyance of the first Lot by Declarant or any Builder to a third party purchaser, the Association will establish an annual assessment that will remain in

effect through the "**base year**" ending December 31, 2005. After the base year, the maximum annual assessment will be as determined by the Board of Directors, subject to the limitations below.

(b) ***Permitted Percentage Increase.*** Except as established in Section 4.03(c) below, the annual assessment charged by the Association may not be increased over the annual assessment in the previous year by more than the Permitted Percentage Increase (as defined below), unless the additional increase is approved at a duly called regular or special meeting by an affirmative vote (in person or by proxy) of two-thirds or more of the total number of eligible votes cast at that meeting in each class of Members. From and after the base year, the Board, without a vote of the Members, may increase the maximum annual assessments during each fiscal year of the Association by an amount ("**Permitted Percentage Increase**") equal to the greater of: (i) 10%; or (ii) a percentage calculated by dividing the Consumer Price Index in the most recent October (identified by an "A" in the formula below) by the Consumer Price Index for the October one year prior (identified by a "B" in the formula below), minus one (i.e., CPI percentage = (A/B) -1). By way of example only, the percentage increase in the assessment for the assessment year 2007 cannot be increased by more than the greater of: (I) 10%; or (II) the increase in the Consumer Price Index for October, 2006, divided by the Consumer Price Index in October, 2005, minus one. The term "**Consumer Price Index**" will refer to the "United States Bureau of Labor Statistics, Consumer Price Index, United States and selected areas, all items (1982-84 = 100)" issued by the U.S. Bureau of Labor Statistics, or its equivalent, revised, or successor index. Notwithstanding the previous portions of this Section 4.03(b), if the Permitted Percentage Increase exceeds 20% or if, regardless of the Permitted Percentage Increase, the annual assessment is otherwise sought to be increased by more than 20% over the annual assessment in the previous year, the increase in the annual assessment must be approved by greater than 50% of the total number of eligible votes of the Members, regardless of class, and these approvals may be obtained at a regular or annual meeting of the Members or by written ballot of the Members.

(c) ***Increases on Neighborhood.*** If any portion of an Annual Assessment is attributable to Neighborhood Assessments, that portion of the Annual Assessment may not be increased without compliance with the provisions in Section 4.03(b) above, except that the Member vote will be limited only to those Members (and classes of membership) in the Neighborhood, which might not include the Class B member.

Section 4.04. Special and Other Association Assessments.

(a) ***Special Assessments.*** The Association, at any time and from time to time in any assessment year and in addition to the annual assessments authorized above or any other assessments authorized elsewhere in this Declaration, may levy a special assessment against all of the Owners within the Project or the Owners in one or more Neighborhoods for the purpose of defraying, in whole or in part: (i) the cost of any construction, repair, or replacement of the Common Area or the Areas of Association Responsibility (including Neighborhood Amenities for which the Association has assumed responsibility to maintain), regardless of the cause for the construction, repair, or replacement; or (ii) the cost of any other unexpected or extraordinary expenses incurred in connection with the maintenance of the Common Area or the Areas of Association Responsibility (including Neighborhood Amenities for which the Association has assumed responsibility to maintain) or any other Association matters. The foregoing assessments will be referred to as "**Special Assessments**" (whether capitalized or not). All special assessments, however, must be approved at a duly called regular or special meeting of the Members by an affirmative vote (in person or by proxy) of two thirds or more of the total number of eligible votes cast at that meeting for each class of Members; however, to the extent the Special Assessment affects only one or more Neighborhoods, the membership vote will be limited to only those Members (and classes of membership) in the applicable Neighborhoods, which might not include the Class B member.

(b) ***Other Assessments.*** In addition to the annual and special assessments described above, the Board, without a vote of the Members, may levy other assessments (collectively called the "**Other Association Assessments,**" whether the term is capitalized or not) against individual Owners arising out of: (i) the Owner's failure to comply with the Project Documents; (ii) any negligent, grossly negligent, or intentional act or omission of the Owner or the Owner's Permittees resulting in injury to any other Owner

or any other person within the Project or damage to any other Lot, Common Area, or other areas of Association responsibility including the Areas of Association Responsibility; or (iii) those indemnification, reimbursement or payment obligations described in Sections 4.01(a)(iv)-(vii), 4.08(c), 5.02, or 5.05 of the Declaration. Assessments made for any of the matters described in the previous sentence will not be considered a monetary penalty against the Owner and will not be subject to the limitations contained in Sections 4.03 or 4.04(a) above.

Section 4.05. Uniform Rate of Assessment. Except to the extent applicable to any Neighborhood Assessments and except as provided below in Section 4.06, both the annual assessments outlined in Section 4.02 and the special assessments outlined in Section 4.04 (a) above must be fixed at a uniform rate for all assessable Lots. Annual assessments may be collected in installments throughout the year as the Board of Directors may determine. The provisions of this Section 4.05 do not preclude the Board from making other assessments of the type described in: (i) Section 4.04(b) above against an Owner or multiple Owners on a non-uniform basis based on the services or benefits provided, the reimbursements required, or the repairs or maintenance performed for which the other assessments are imposed; and (ii) Section 4.02(b) above against only those Owners in a particular Neighborhood (and not all Owners with the Project), so long as those assessments are uniform among the Owners in that Neighborhood.

Section 4.06. Reduced Assessments. Notwithstanding anything in this Declaration to the contrary, the rate of assessment (for Annual and Special Assessments) for Inventory Lots owned by the Declarant or any Builder and Completed Inventory Lots will be 25% of the rate for completed and occupied Lots owned by Class A members; however, Declarant and any applicable Builder will be obligated to pay to the Association for any Shortfall caused by reason of the reduced assessments paid by the Declarant or Builder. If reduced assessments apply to the Declarant or any Builder and a Shortfall exists, then the Association will: (i) calculate the total number of Lots for which each Builder paid a reduced assessment for any portion of the time period in question (as to each Builder, this amount is referred to as the "**Builder Reduced Assessment Lots**"); (ii) determine the total number of Lots owned by the Declarant for which the Declarant paid a reduced amount as of the end of the time period in question; (iii) add the amounts in subsections (i) and (ii) above together (this being referred to as the "**Total Reduced Assessment Lots**"); and (iv) assess the Shortfall to each Builder in the ratio that the number of the Builder Reduced Assessment Lots for that Builder bears to the Total Reduced Assessment Lots. Any remaining Shortfall will be paid by the Declarant. The respective maximum annual obligation of Declarant and any Builder for any Shortfall, however, will be equal to the amount of assessments that would have been charged to the Declarant or the Builders had both owned the Lots as Class A members subject to full assessments for the period of ownership during the year in question. If any Shortfall remains after collection of the amounts described above from Declarant and Builders, the Association may levy a Special Assessment against all Owners, including Declarant and Builders on a pro rated and uniform rate per Lot.

Section 4.07. Commencement and Verification of Assessments.

(a) ***Commencement and Collection.*** The annual assessments established in this Declaration will commence: (i) as to any Parcel owned by a Builder or Lots owned by a Builder in a Neighborhood, the first day of the month following the twelfth month anniversary of the conveyance of the Parcel or Lots by Declarant to a Builder; or (ii) as to Lots sold by Builders or Declarant to Owners that constitute Class A Members, on the first day of the month following the conveyance of a particular Lot to the first Owner that constitutes a Class A Member. The first annual assessment will be adjusted according to the number of months remaining in the calendar year. After determination of the annual assessment during the base year, the Board of Directors will endeavor to fix the amount of each subsequent annual assessment against the Lot at least 30 days in advance of each annual assessment period; however, the annual assessment will be binding notwithstanding any delay and all amounts due for annual assessments in any calendar year may be collected retroactively for that calendar year upon their determination or approval under the Project Documents. Written notice of the annual assessment and any special assessments must be sent to every Owner subject to the assessment. The due dates for assessments will be established by the Board of Directors. Assessments will be payable in the full amount specified by the assessment notice, and no offsets against this amount will be permitted for any reason whatsoever including, without limitation, abandonment of the Owner's Lot, a claim that the Association is not properly exercising its duties in maintenance or enforcement, a claim against the Declarant or its affiliates, or the non-use or claim of non-

use by Owner of all or any portion of the Common Area. Assessments may be collected in advance or in arrears as the Board of Directors will determine in their sole discretion.

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

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

(a) ***Late Charge.*** Any installment of any annual, special, or other assessment that is not paid within 15 days after the due date will be subject to a late charge equal to the greater of $15 or 10% of the unpaid assessment and, additionally, will bear interest from the due date at the minimum rate of 12% per annum, compounded monthly, or any other legal interest rate approved by the Board of Directors and permitted under the requirements of any applicable Institutional Guarantor.

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

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

(d) ***Collection and Lien Actions.*** Each Owner of a Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "**Owner**", specifically vests in the Association and its agents the right and power to bring all actions against the Owner personally for the collection of all assessments due under the Project Documents as a debt to the Association and to enforce the lien securing the assessment by all methods available for the enforcement or foreclosure of liens under the Project Documents or Arizona law. To the extent permitted by law, each Owner grants to the Association a private power of sale in connection with the lien. The Association may bid in any foreclosure, sheriff's sale, or similar sale (whether or not the foreclosure was initiated by the Association or some other person) and acquire, hold, lease, mortgage, and convey the Lot purchased through a foreclosure, sheriff's, or similar sale. During the period any Lot is owned by the Association after or through any foreclosure, sheriff's, or similar sale, no right to vote will be exercised with respect to the Lot and no assessment of any nature will be assessed or levied on or with respect to the Lot during ownership of the Lot by the Association and the acquisition or ownership of the Lot by the Association in these circumstances will not convert (or be deemed to convert) the Lot into Common Area. The Association also may institute suit to recover a money judgment for unpaid assessments of the Owner without being required to foreclose its lien on the Lot and without waiving the lien that secures the unpaid assessments. Any foreclosure action of the Association may be instituted without regard to the value of the Lot, the solvency of the Owner, or the relative size of the Owner's default. The Association's assessment lien and its rights of enforcement under this Declaration are in addition to, and not in substitution of, all other rights and remedies that the Association may be entitled to exercise under the other Project Documents or Arizona law.

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

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

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

Section 4.11. Initial Working Capital. To provide the Association with funds for initial capital reserves and extraordinary or unexpected expenses, each purchaser of a Lot from the Declarant (except for the Builders) and each purchaser of a Lot from any Builder will pay to the Association, immediately upon becoming the Owner of a Lot, an amount equal to one-sixth (1/6) of the Association's annual assessment for the then current fiscal year of the Association. These working capital payments will be collected only upon the original sale of the Lot by the Declarant (except in the case of a sale to a Builder) or by a Builder and will not be collected on subsequent resales. All working capital payments to the Association will be deposited in the Association's reserve account or separately accounted for in the Association's operating account as a reserve fund, and all working capital reserve funds will be used to cover the cost of capital repairs or extraordinary or unexpected expenses of the Association that are not covered by the Annual or Special Assessments only as directed by the Board of Directors, as they may see fit in their sole discretion. None of the working capital payments can be used to fund Association litigation of any nature. During the period of Declarant Control, neither the Association nor the Declarant will use any of the working capital funds to defray the Declarant's direct expenses or construction costs or to pay for ordinary expenses of the Association. Declarant, in its sole discretion, may advance certain amounts to the Association as working capital; however, Declarant will not be obligated to advance any amounts for working capital. If Declarant elects to advance any amounts for working capital, Declarant will be entitled to a reimbursement from the Association, upon Declarant's demand, for all working capital funds previously advanced by Declarant. Except for those amounts paid by Declarant as working capital as established above, all amounts paid as working capital will be non-refundable and will not act as a credit against any assessment payable by an Owner pursuant to this Declaration.

ARTICLE V

COMMON AREA AND LOT MAINTENANCE

Section 5.01. Common Area. Except as provided in Section 5.02 below, the Association will be responsible for the maintenance, repair, and replacement of the Common Area and the Areas of Association Responsibility, and, without any approval of the Owners, the Association may: (i) reconstruct, repair, replace, and refinish any landscaping or improvement located on or used in connection with the Common Area or any Areas of Association Responsibility; and (ii) do any other acts deemed necessary to preserve, beautify, and protect the Common Area or any Areas of Association Responsibility in accordance with the general purposes specified in the Project Documents. The Board of Directors will be the sole and absolute judge as to the appropriate maintenance of the Common Area and the Areas of Association Responsibility. The City is not responsible for, and will not accept maintenance of, any private facilities, landscaping, or similar improvements within the Common Area, the maintenance and responsibility for which will be that of the Association. The Association will have no obligation to perform any maintenance or repair work that is performed by the City or any provider utility company that is responsible for the maintenance of any utilities or improvements located within the Project. No Owner will alter, remove, injure, or interfere in any way with any landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like, if any, placed on the Common Area or any Areas of Association Responsibility without the express written consent of the Declarant, during the period of Declarant Control, or the Architectural Committee, after the period of Declarant Control.

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

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

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

Section 5.05. Landscaping. Unless completed by Declarant or any Builder as part of the Owner's purchase contract for the Lot and Detached Dwelling Unit, the Open Yard of a Lot must be landscaped by the Owner of the Lot within 90 days of becoming an Owner. The foregoing timing requirement will not apply to the Declarant or any Builder or to any Lots owned by the Declarant or any Builder as model units or Completed Inventory Lots. Plans for all landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, decorative features (such as fountains, water features, flag poles, planters, bird baths, sculptures, and walkways), and the like (collectively called, in this Declaration, the "**landscaping**") that are to be installed in Owner's Open Yard must be approved prior to installation by the Architectural Committee under this Declaration. The Architectural Committee may establish from time to time a preferred, recommended, and/or required plant list, as part of or separate from the Design Guidelines. The Lot and all landscaping located on the Lot must be maintained at all times in clean, safe,

neat, and attractive condition and repair solely by the Owner of the Lot, and the Owner will be solely responsible for neatly trimming and properly cultivating the landscaping located anywhere on the Lot and for the removal of all yard clippings, trash, weeds, leaves, and other unsightly material located on the Lot.

Section 5.06. Owner's Failure to Maintain. If an Owner fails to perform any maintenance and repair required under the terms of this Article V, then, upon the vote of a majority of the Board of Directors and after not less than 30 days prior written notice to that Owner, the Association will have the right (but not the obligation) to enter upon or into that Lot and to provide the required maintenance or make the required repairs. Any entry by the Association or its agents will not be considered a trespass. The cost of these maintenance items and repairs will be an assessment against the applicable Lot and the Owner, will be paid promptly to the Association by that Owner, and will constitute a lien upon that Owner's Lot. The self-help rights of the Association described above are in addition to any other remedies available to the Association under the Project Documents or Arizona law. Upon recordation of a Notice and Claim of Lien specifically referring to this Section 5.06, the assessment made for the cost of the maintenance and repairs performed by the Association will be deemed to have been delinquent as of the date of recordation of this Declaration, and the lien for this other assessment will have priority based on the recordation date of this Declaration.

Section 5.07. Fences and Walls.

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

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

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

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

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

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

(f) ***Private Yard Construction***. To the extent necessary for the Owner to construct or install any swimming pool, spa, or similar or other improvement in the Private Yard of the Owner's Lot, the Owner may remove all or a part of any Fence of the type described in Section 5.07(c) above so long as: (i) the Owner performing the work will give prior written notice to all adjoining Owners; (ii) the Owner performing the work provides the Association with cash, cash equivalent, or bond in the amount of not less than $1,000 (or such higher or lower amounts as the Architectural Committee may determine appropriate) to ensure restoration and rebuilding the Fence; and (iii) the Owner performing the work will rebuild, at its sole cost, the Fence and restore the adjoining areas to its condition prior to removal within a reasonable time after entry through the Fence area is no longer required in connection with the Private Yard construction. If the Owner fails to timely rebuild and restore, the Association will be entitled to cause the rebuilding and restoration through the use of the Owner's cash or cash equivalent deposit or bond, and any balance due will become an Other Association Assessments (as described in Section 4.04(b) above) against the Owner and the Owner's Lot secured by the Association's lien for Assessments.

Section 5.08. Vehicles.

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

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

(c) ***Permitted Commercial Vehicles***. Certain types of Commercial Vehicles may be treated as Personal Vehicles and used and parked within the Project as Personal Vehicles if their appearance is similar to that of a Personal Vehicle, as determined by the Architectural Committee. For example, the following types of Commercial Vehicles will automatically be considered Personal Vehicles: (i) commercial pickup trucks with a manufacturer's capacity rating of one ton or less that depict or advertise the name of a business on the vehicle so long as nothing is attached to or located in the bed of the truck other than tool chests or other equipment stored or located below eye level of the pickup bed walls; (ii)

commercial pickup trucks with a manufacturer's capacity rating of one ton or less equipped with a camper or camper shell so long as the height of the truck with the camper shell is no more than eight feet in height (when measured from ground level of the vehicle); and (iii) vehicles that are similar to Personal Vehicles but that may have the name of a business or government organization on the vehicle (such as realtor cars or state vehicles). Without limiting the foregoing, the Architectural Committee also may make a determination that certain other types of Commercial Vehicles may be suitable for storage or parking within the Project if the Commercial Vehicles are of a size or type that could be stored or parked on the Owner's Lot in a manner that would not detract from the residential nature of the Project and the immediately surrounding area.

(d) ***Arizona Statutes.*** A.R.S. § 33-1809 (as enacted as of the date of recordation of this Declaration) expressly provides that the Association and the Project Documents cannot prevent an Owner from parking certain types of motor vehicles (including types of vehicles that could otherwise be considered Commercial Vehicles under this Declaration) on a street or driveway within a planned community such as the Project. Any parking restrictions or limitations contained in the Project Documents must always be interpreted in accordance with A.R.S. § 33-1809 (as amended from time to time), and, as of the date of recordation of this Declaration and notwithstanding the terms of the Declaration, the following types of vehicles may be parked within the Project:

(i) Any vehicle that is required to be available at designated periods at the residence of the Owner or the Owner's Occupants as a condition of employment so long as either (A) the Owner or Owner's Occupant is employed by a public service corporation that is regulated by the Arizona Corporation Commission and that is required for emergency deployments of personnel and equipment for repair or maintenance of natural gas pipelines and related infrastructure, or (B) the vehicle has a gross vehicle weight rating of 20,000 pounds or less, is owned or operated by the public service corporation, and bears an official emblem or visible designation of the public service corporation; and

(ii) The Owner or the Owner's Occupant is employed by a public safety agency (including police or fire service; federal, state, local, or tribal agency; private fire service provider; or ambulance service provider that is registered pursuant to Title 36, Chapter 21.1, Arizona Revised Statutes) and the vehicle has a gross vehicle rating of 10,000 pounds or less and bears an official emblem or other visible designation of the public safety agency described above.

The Association, through the Board, may require an Owner attempting to park one of the vehicles described in this Section 5.08(d) within the Project to provide written evidence of the matters outlined above. The list and/or requirements for parking these or other types of vehicles within the Project may change based on future modifications to A.R.S. § 33-1809, and the provisions of this Section 5.08(d) will be interpreted in a manner consistent with A.R.S. § 33-1809, as amended.

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

(f) ***Side Yard Parking Areas.*** Not all Lots are suitable for Side Yard Parking Areas, and some Lots may not be suitable for Side Yard Parking Areas even though they are similar in size to other Lots with Side Yard Parking Areas because of Lot location, Lot configuration, view orientation, streetscape, and similar aesthetic reasons, in the sole discretion of the Architectural Committee. Prior to installation of any Side Yard Parking Area on a Lot, the Owner must submit to the Architectural

Committee for approval complete plans and specifications for the width, depth, design, location, composition, and appearance of the Side Yard Parking Area. The approval by the Architectural Committee of a Side Yard Parking Area should not be construed as the approval to park or store Personal Vehicles, Commercial Vehicles, or Recreational Vehicles in the Side Yard Parking Area, and the types of Personal Vehicles, Commercial Vehicles, and Recreational Vehicles that may be parked or stored in the Side Yard Parking Area are governed by other provisions of the Project Documents.

(g) ***Board Decisions on Vehicles***. The Architectural Committee and, if the Architectural Committee's decision is appealed, the Board will be the sole judge as to: (i) whether any Commercial Vehicle or Recreational Vehicle will be considered a Personal Vehicle for the purposes of this Declaration and the other Project Documents; and (ii) whether any Commercial Vehicle or Recreational Vehicle is parked in accordance with the Project Documents. Not all types of Commercial Vehicles or Recreational Vehicles will be considered Personal Vehicles. A determination by the Architectural Committee will be final and binding on all persons absent timely appeal to the Board and, in the case of an appeal, a determination by the Board will be final and binding on all persons.

Section 5.09. General Standards. Except as may be otherwise provided in this Declaration or the other Project Documents, the Association and each respective Owner of a Lot, as applicable, will maintain the areas they are respectively responsible for at a level of general maintenance at least equal to that prevailing with respect to areas of a similar nature located in residential communities commonly and generally deemed to be of the same quality as the Project.

ARTICLE VI

POWERS OF THE OWNERS' ASSOCIATION

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

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

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

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

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

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

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

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

Section 6.02. Insurance.

(a) ***Liability Insurance.*** Comprehensive general liability insurance covering the use and operation of the Common Area and the activities of the Association within the Areas of Association Responsibility will be purchased and obtained by the Board for the Association, or acquired by assignment from Declarant. This insurance policy will be maintained in force by the Association at all times during the term of this Declaration. The premiums will be paid out of the Association's funds. The insurance will be carried with reputable companies authorized and qualified to do business in Arizona. The minimum amounts of coverage will be $1,000,000 for bodily injury and property damage on a combined single limit basis. The policy will be purchased on an occurrence basis and will name as insureds the Owners, the Association (its directors, officers, employees, and agents acting in the scope of their employment), and the Declarant (its directors, officers, partners, employees, and agents in the scope of their employment) for so long as Declarant owns any Lot. This policy will include, but need not be limited to, insurance against injury or damage occurring in or on the Common Area.

(b) ***Hazard and Multi-Peril Insurance – Master Policy for Common Area.*** A master or blanket hazard and multi-peril insurance policy will be purchased or obtained by the Board or acquired by assignment from Declarant promptly following the construction of any building or other similar permanent structure on the Common Area. Once purchased, obtained, or acquired, the hazard insurance policy will be maintained in force at all times. The premiums will be paid out of the Association's funds. The hazard insurance policy will be carried with reputable companies authorized and qualified to do business in the State of Arizona and will insure against loss from fire and other hazards covered by the standard extended coverage endorsement and "all risk" endorsement to the hazard insurance policy for the full replacement cost of all of the permanent improvements upon the Common Area and the Areas of Association Responsibility. The hazard insurance policy will be in an amount determined from time to time by the Board in its sole discretion. The hazard insurance policy will name the Declarant (for so long as Declarant owns a Lot), Association, and any First Mortgagee of the insured permanent improvements on the Common Area as insureds, as their respective interests may appear.

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

(d) ***Other Insurance.*** The Board may purchase (but is not obligated to purchase) additional insurance that the Board determines to be advisable or necessary including, but not limited to, workmen's compensation insurance, boiler explosion insurance, demolition insurance, flood insurance, fidelity bonds, director and officer liability insurance, errors and omissions insurance, and insurance on personal property owned by the Association. All premiums for these types of insurance and bonds will be paid out of the Association's funds. The Association may assess the Owners in advance for the estimated cost of these types of insurance. By virtue of owning a Lot subject to this Declaration, each Owner covenants and agrees with all other Owners and the Association that each Owner will carry "all-risk" casualty insurance on its Detached Dwelling Unit. Without limiting any other provision of the Declaration, it will be each Owner's sole responsibility to secure liability insurance, theft, fire, multi-peril, and other hazard insurance covering loss or damage to the Owner's personal property, Detached Dwelling Unit, and any other insurance not carried by the Association that the Owner desires.

(e) ***Owner Insurance.*** By virtue of owning a Lot subject to this Declaration, each Owner covenants to all other Owners and the Association that the Owner will carry all risk casualty insurance on its Detached Dwelling Unit. Without limiting any other provision of the Declaration, it will be each

Owner's sole responsibility to provide and maintain: (i) personal liability insurance on the use of the Lot and Detached Dwelling Unit; (ii) theft, fire, multi-peril, and other hazard insurance covering loss or damage to the Owner's personal property and Detached Dwelling Unit; and (iii) any other insurance not carried by the Association that the Owner desires.

(f) ***General Provisions on Insurance***. The Board of Directors of the Association is granted the authority to negotiate loss settlements with the appropriate insurance carriers covering insurance purchased and obtained by the Association pursuant to Section 6.02. Any two Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and their signatures will be binding on the Association and the Members. Any policy of insurance obtained by the Association may contain a reasonable deductible no higher than that permitted by any Institutional Guarantor. The deductible will be paid by the party who would be responsible for the repair in the absence of insurance and, if multiple parties are responsible, the deductible will be allocated in relation to the amount each party's responsibility bears to the total loss, as determined by the Board. The allocation of responsibility by the Board will not limit the right of a Member to enforce any indemnity rights of the Member against any one or more responsible Members or to enforce any right of joint and several liability in a court of law or alternative dispute resolution forum. Where possible, each insurance policy maintained by the Association must require the insurer to notify the Association in writing at least 10 days before the cancellation or any substantial change to the Association's insurance.

(g) ***Non-liability of Association***. Notwithstanding the requirement of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant nor any Builder nor the Association nor any director, officer, partner, employee or agent of any of the foregoing will be liable to any Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of insurance is not adequate, and it will be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Owner may desire.

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

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

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

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

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

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

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

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

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

(i) ***Governmental Requirements***. Notwithstanding anything to the contrary contained in this Section 6.02, the Association will maintain any other forms or types of insurance as may be required from time to time by any applicable guidelines issued by any Institutional Guarantor. Additionally, all insurance maintained by the Association must meet the rating requirements of any Institutional Guarantor.

Section 6.03. Damage and Destruction - Reconstruction. If the Common Area or the Areas of Association Responsibility are damaged or destroyed, the Board will obtain bids and contract for repair or reconstruction of these improvements. If the proceeds of any insurance policies payable as a result of the damage or destruction together with the amounts paid by a responsible Owner under Section 5.02 of this Declaration are insufficient to complete the repair or reconstruction, the deficiency will be the subject of a special assessment against, in the case of Common Area or Areas of Association Responsibility designated for use by all Owners, all Lots or, in the case of Areas of Association Responsibility designated solely for use by the Owners within a particular Neighborhood, all Lots in the applicable Neighborhood.

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

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

ARTICLE VII

ARCHITECTURAL CONTROL

Section 7.01. Architectural Approval. No Ancillary Unit may be constructed or maintained on a Lot, and no exterior addition, change, or alteration may be made to any Detached Dwelling Unit or approved Ancillary Unit located on a Lot and no interior change or alteration that would be Visible From Neighboring Property may be

made to the Detached Dwelling Unit or approved Ancillary Unit, until all plans and specifications for the foregoing are submitted to and approved in writing by the Architectural Committee. All plans and specifications submitted to the Architectural Committee must specifically identify in writing the item for which approval is sought and must show the nature, type, size, style, color, shape, height, location, materials, floor plan, approximate cost, and other material attributes of the proposed item. All plans and specifications will be reviewed by the Architectural Committee for harmony and compatibility of external design and location in relation to surrounding structures, landscaping, topography, and views from neighboring Lots. Without limiting the generality of the preceding sentence, the prior approval of the Architectural Committee also will be necessary for those types of landscaping installed on a Parcel or Lot, all roof mounted equipment of the type described in Section 9.06 below, all window coverings of the type described in Section 9.12 below, all Side Yard Parking Areas, and all mailboxes of the type described in Section 9.28 below. Unless a different time period is specified in this Declaration, if the Architectural Committee fails to approve or disapprove the plans and specifications within 30 days after complete and legible copies of the plans and specifications have been submitted to the Association, the application will be deemed approved. Except for the right to appeal the decision of the Architectural Committee to the Board under Section 7.07 below, all decisions of the Architectural Committee will be final.

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

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

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

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

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

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

ARTICLE VIII

SUBSIDIARY ASSOCIATIONS

Section 8.01. Formation of Subsidiary Associations. Declarant or any Builder may establish (but is not required to establish) a Subsidiary Association as to any Neighborhood for the purposes of collecting all assessments due under this Declaration or the other Project Documents, imposing additional use restrictions, establishing additional covenants and/or easements, creating a condominium, and/or enforcing the rights and remedies of any Subsidiary Declaration. The documents that govern or establish any Subsidiary Association must be submitted to and approved by the Association prior to formation of the Subsidiary Association. Subsidiary Associations will have the power to enforce any use restrictions contained in the Subsidiary Declaration, to assess Lots (within only the Neighborhood that is subject to the Subsidiary Declaration) for those assessments established in the Subsidiary Declaration, to lien Lots within the Neighborhood as may be established in the Subsidiary Declaration (so long as any lien of the Subsidiary Association against a Lot is automatically subordinate to the lien of the Association established under the Declaration), to exercise the types of powers described in Section 6.01 (but solely with respect to the administration and affairs of the Subsidiary Association and Subsidiary Declaration), and to commence an action to enforce the Subsidiary Declaration (subject to, where applicable, compliance with the alternative dispute resolution procedures of this Declaration). As to any Neighborhood Amenities that are reserved for maintenance by a Subsidiary Association and for the sole use of the Owners within that Neighborhood, the Subsidiary Association may exercise powers similar to those reserved by the association under Section 2.03(a). Without limitation, the Subsidiary Association's governing documents must provide for:

(a) The establishment of an annual budget that includes the payment of an amount sufficient to cover the pro rata portion of the assessments due under this Declaration;

(b) The ownership and, unless the Association agrees otherwise as provided in this Declaration, the maintenance of any applicable Neighborhood Amenities by the Subsidiary Association in accordance with the Community-Wide Standard;

(c) The right (but not the obligation) of the Association to take temporary control of the Subsidiary Association if the Subsidiary Association fails to collect assessments in an amount sufficient to pay and satisfy the assessments due to the Association;

(d) The right (but not the obligation) of the Association, as a third-party beneficiary, to enforce the Subsidiary Association's rights and remedies under any Subsidiary Declaration, if the Subsidiary Association refuses or neglects to enforce the rights and remedies after 30 days written notice from the Association; and

(e) The ability of the Subsidiary Association to determine how to exercise any voting rights (if any) reserved to the various Owners within the Neighborhood affected by the Subsidiary Declaration.

Section 8.02. Notice of Formation. Declarant or any Builder establishing a Subsidiary Association must provide the Association with full and complete copies of all governing documents applicable to the Subsidiary Association, including the Subsidiary Declaration and all amendments that may be enacted from time to time. All information must be promptly provided to the Association and, in all cases, no later than 30 days after written request from the Association.

Section 8.03. Subsidiary Associations Bound. Upon the incorporation of any Subsidiary Association, the Project Documents will be binding on and will benefit the Subsidiary Associations. In the case of any conflict between the Project Documents, on the one hand, and the Subsidiary Declaration or the organizational documents for the Subsidiary Associations, on the other hand, the Project Documents will govern and control.

Section 8.04. Management and Control. Except to the extent the Association elects to take temporary control over the Subsidiary Association or elects to enforce any Subsidiary Declaration under 8.01(b) or 8.01(c), respectively, all administrative and management services provided under any Subsidiary Declaration will be provided solely by the Subsidiary Association and not the Association.

Section 8.05. Assessments Specifically. The Association will have the rights described in Section 8.01(b) above to take control of the Subsidiary Association for any period of time that may be necessary to bring about collection of the assessments. Control may be accomplished through the removal and substitution of officers and directors of the Subsidiary Association or any other manner permitted under Arizona law. Without limitation of any other remedies available to the Association, the Association also will have the right to file a lien against the Parcel or Lot of any delinquent Owner within the subsidiary community in an amount equal to:

(a) all amounts owed by the delinquent Owner for Assessments or otherwise;

(b) all costs of collection (including attorney fees); and

(c) all applicable late charges and interest.

To enforce and collect these amounts, the Association may enforce an assessment lien against the applicable Parcel or Lot or may exercise any other remedy available to the Association under the Project Documents.

Section 8.06. Enforcement under Subsidiary Declaration. To the fullest extent permitted under Arizona law, all disputes solely between Owners within a Parcel subject to a Subsidiary Declaration as to a matter solely involving the Subsidiary Declaration will be handled and resolved by the Subsidiary Association, and, unless the Association otherwise elects to be involved, the Association will not be involved in these types of disputes.

Section 8.07. Subsidiary Association Meetings. If requested by the Association, the Subsidiary Association will provide notice to the Association of all regular or special meetings of the Subsidiary Association's members or directors. A representative of the Association may attend these meetings.

Section 8.08. Remedies of Association. Without limiting the remedies of the Association outlined above in Article VIII but subject to the limitations outlined in Sections 11.01, 11.02, and Article XIII below, the Association will have all rights and remedies available under Arizona law to enforce this Declaration or any Subsidiary Declaration including the right to commence an action in contract against any Owner and/or the Subsidiary Association.

ARTICLE IX

USE RESTRICTIONS

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

Section 9.01. Restricted Use. Except as otherwise permitted under this Declaration, a Lot will be used only by a Single Family and only for Single Family Residential Use. All construction on any Lot will be restricted to single-family houses and related improvements. No permanent or temporary prefabricated housing, modular housing, or manufactured housing may be placed on a Lot as a Detached Dwelling Unit or an Ancillary Unit. No Commercial, Recreational Vehicle, or Family Vehicle may be used within the Project as living or sleeping quarters on a permanent or temporary basis, and, except for Ancillary Units specifically designed for sleeping or living, no garage or Ancillary Unit may be used as living or sleeping quarters on a permanent or temporary basis.

Section 9.02. Business and Related Uses. No Lot or Detached Dwelling Unit will ever be used, allowed, or authorized to be used in any way, directly or indirectly: (i) as a bed and breakfast, or transient lodging facility; (ii) for business, trade, commercial, manufacturing, industrial, mercantile, commercial storage, vending, or other similar uses or purposes; or (iii) as a daycare, nursery school, or similar child care facility. The previous sentence will not limit the right of the Declarant, any Builder, and their respective affiliates and agents to use the Property or Lots for any of the foregoing uses as may be required, convenient, or incidental to the construction and sale of Detached Dwelling Units, including, without limitation, a business office, management office, storage area, construction yard, signage, model sites, and display and sales office during the construction and sales period. The foregoing restriction will not prevent an Owner from conducting his or her personal affairs on the Lot or in the Detached Dwelling Unit and will not be deemed to prevent an Owner and the Owner's Occupants only from the incidental and secondary use of the Detached Dwelling Unit for business or trade purposes that: (i) utilize portions of the Detached Dwelling Unit in such a manner so that the existence or operation of the business activity is not detectable by sight, sound, or smell from the outside of the Detached Dwelling Unit; (ii) in the Board's judgment, do not generate a level of vehicular or pedestrian traffic or number of vehicles being parked within the Project that is noticeably greater than that which is typical of Lots and Detached Dwelling Units in which no business activity is being conducted; (iii) in the Board's judgment, is consistent with the residential character of the Project and does not constitute a nuisance, or offensive use, or threat to the security or safety of the residents at the Project; (iv) do not involve door to door solicitation of residents within the Project and do not use the street address of the Lot in any off-site signs, advertising, or similar marketing materials; and (v) do not otherwise violate local zoning and use laws applicable to the Project. Any Owner may petition the Board in writing for a determination that a particular use of the Lot or Detached Dwelling Unit is not prohibited under the Project Documents. As used above, the terms "**daycare**," "**nursery school**," "**child care facility**," or similar words or phrases will refer to the use of a Detached Dwelling Unit or Lot for the care of five or more unrelated school age children, whether compensated or not.

Section 9.03. Signs. No emblem, logo, sign, or billboard of any kind will be displayed on any of the Lots or Common Area so as to be Visible From Neighboring Property, except for: (i) signs used by Declarant or Builders to advertise the Lots or living units on the Lots for sale or lease; (ii) signs on the Common Area as may be placed and approved by the Declarant, during the period of Declarant Control, or by the Architectural Committee, after the period of Declarant Control; (iii) one sign having a total face area of five square feet or less advertising a Lot and Detached Dwelling Unit for sale or rent placed in a location designated by the Architectural Committee; (iv) any security, alarm, or block watch sign located near the front door of the Detached Dwelling Unit; (v) signs as may be required by legal proceedings; and (vi) signs as may be approved in advance by the Architectural Committee in terms of number, type, and style. The foregoing will not be deemed to prevent an Owner from displaying religious and holiday signs, symbols, and decorations of the type customarily and typically displayed inside or outside single family residences, subject to the authority of the Board or the Architectural Committee to adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners (including disturbance from pedestrian and vehicle traffic coming on the Project to view the signs, symbols, and decorations). The foregoing also will not be deemed to prevent an Owner from the appropriate display of: (i) a flag on a house or garage mounted bracket or a flagpole; or (ii) a political sign on an Owner's Lot or inside an Owner's Detached

Dwelling Unit, all in accordance with those standards that may be adopted from time to time by the Architectural Committee in a manner consistent with A.R.S. § 33-1808.

Section 9.04. Restricted Activities. No illegal, noxious, or offensive activity will be engaged in (or permitted to be engaged in) on any Lot. No act or use may be performed on any Lot that is or may become an annoyance or nuisance to the neighborhood generally or other Owners specifically, or that interferes with the use and quiet enjoyment of any of the Owners and of the Owner's Lot. Music and other sounds from outdoor speakers will be played at a level so as to not be a nuisance to neighboring Lot Owners. No Owner will permit any thing or condition to exist upon any Lot that induces, breeds, or harbors infectious plant diseases or infectious or noxious insects.

Section 9.05. Restricted Residences. Except as originally constructed by the Declarant as part of the original construction of the Detached Dwelling Unit and related improvements, no Ancillary Units will be constructed or maintained on any Lot at any time, unless the type, size, shape, height, location, style, and use of the Ancillary Unit, including all plans and specifications and materials for the Ancillary Unit, are approved by the Architectural Committee pursuant to Article VII above prior to the commencement of construction. All Ancillary Units approved by the Architectural Committee for construction on a Lot must be constructed solely from new materials and must be constructed in compliance with all local and municipal codes, ordinances, and stipulations applicable to the Project and all restrictions contained in the Project Documents. Any Ancillary Unit that has been constructed without the prior approval of the Architectural Committee or in violation of any provision of the Project Documents or any local or municipal codes, ordinances, and stipulations is subject to removal upon notice from the Association at the sole loss, cost, and expense of the constructing Owner.

Section 9.06. Roofs and Roof Mounted Equipment. All original and replacement roofs for all Detached Dwelling Units located within the Property must be made of tile, slate, fired clay, concrete, or similar material, unless otherwise approved by the Architectural Committee. Solar energy panels, solar energy devises, swamp coolers, air conditioning units, or other cooling, heating, or ventilating systems may not be installed on the roof of any Detached Dwelling Unit or Ancillary Unit or in any other area of a Lot that is Visible From Neighboring Property, except where originally installed by the Declarant, unless otherwise approved by the City and the Architectural Committee.

Section 9.07. Animals. No animals, reptiles, insects, amphibious creatures, livestock, horses, birds, or poultry of any kind will be raised, bred, or kept on or within any Lot or structure on a Lot; however, an Owner may keep a reasonable number of dogs, cats, or other common household pets in the Detached Dwelling Unit or in an enclosed Private Yard if permitted under local zoning ordinances. The Board will be the sole judge as to what constitutes a reasonable number of pets and what constitutes a common household pet. Each Owner covenants that it will seek the Board's approval before bringing pets on the Owner's Lot that may not be considered common household pets. The foregoing restriction will not apply to fish contained in indoor aquariums. These permitted types and numbers of pets will be permitted for only so long as they are not kept, bred, or maintained for any commercial purpose and for only so long as they do not result in an annoyance or nuisance to other Owners. No pets will be permitted to move about unrestrained in any Public Yard of the Owner's Lot or any other Lot, Common Area, Areas of Association Responsibility, or any public or private street within the Project. Each Owner will be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the Owner's Lot or any other Lot, Common Area, Areas of Association Responsibility, or public or private streets. Owners will be liable for all damage caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing, and the Board will be the sole judge for determining whether a pet is a common household pet or whether any pet is an annoyance or nuisance. No dog runs, animal pens, or similar pet enclosures may be erected on any Lot unless approved by the Architectural Committee.

Section 9.08. Drilling and Mining. No oil or mineral drilling, refining, quarrying, or similar mining operations of any kind will be permitted upon or in any Lot. No wells, tanks, tunnels, mineral excavations, or shafts will be permitted on or under the surface of any Lot. No derrick or other structure designed for use in boring for water, oil, or natural gas will be erected, maintained, or permitted upon any Lot.

Section 9.09. Trash. All rubbish, trash, and garbage will be regularly removed from their respective Lots, and an Owner will not allow rubbish, trash, or garbage to accumulate on any Lot. If an Owner allows trash to

accumulate on the Owner's Lot, the Board, on behalf of the Association, may arrange and contract for the removal and cleanup of the trash, and the costs will become an assessment to that Owner. No incinerators will be kept or maintained on any Lot. Refuse containers may be placed on a Lot so as to be Visible From Neighboring Property only on trash collection days and then only for the shortest period of time reasonably necessary for trash collection. Except as permitted in the previous sentence, refuse containers will be stored in an enclosed garage or on another portion of a Lot that is not Visible From Neighboring Property.

Section 9.10. Woodpiles and Storage Areas. Woodpiles, storage areas, and pool filters may be maintained only in the Private Yard of a Lot and only in a manner that is not Visible From Neighboring Property. Covered or uncovered patios may not be used for storage purposes, whether or not the patio or any objects on the patio are Visible From Neighboring Property. Yard tools, lawn mowers, and similar tools and equipment must be stored (when not in use) in the garage of the Lot or in an enclosed storage shed approved as an Ancillary Unit.

Section 9.11. Antennas. Except for the Permitted Satellite Dishes and Exterior Antennas, no external radio antenna, television antenna, or satellite dish may be installed or constructed on any Lot, on the roof of any Detached Dwelling Unit, or on any permitted Ancillary Unit in any manner that will make any portion of the external radio antenna, television antenna, or satellite dish Visible From Neighboring Property. Notwithstanding the preceding sentence, an Owner may install Permitted Satellite Dishes and Exterior Antennas in any location on a Lot, Detached Dwelling Unit, or Ancillary Unit so long as the Owner notifies the Architectural Committee of the location. When permitted by law with respect to Permitted Satellite Dishes and Exterior Antennas, the Architectural Committee may require specific locations, size limitations, or screening devices so long as the restrictions do not impair the installation, maintenance, or use of the Permitted Satellite Dishes and Exterior Antennas, as the term "**impair**" is defined under the Telecommunications Act of 1996 and any rules promulgated under the Telecommunications Act of 1996, as either may be amended.

Section 9.12. Windows and Window Covering. Sheets, newspapers, and similar items may not be used as temporary window coverings. No aluminum foil, reflective screens, reflective glass, mirrors, or similar reflective materials of any type will be placed or installed inside or outside of any windows of a Detached Dwelling Unit or Ancillary Unit without the prior written approval of the Architectural Committee. Window coverings such as drapery, curtains, shutters, blinds, etc. that are Visible From Neighboring Property must be a neutral color and/or blend with the Detached Dwelling Unit. No awnings, storm shutters, canopies, air conditioners, swamp coolers, or similar items may be placed in, on, or above any window of a Detached Dwelling Unit or Ancillary Unit so as to be Visible From Neighboring Property, unless approved by the Architectural Committee.

Section 9.13. Leasing. Nothing in the Declaration will be deemed to prevent the leasing of a Lot and Detached Dwelling Unit on a non-transient basis to a Single Family from time to time by the Owner of the Lot, subject to all of the provisions of the Project Documents, and the leasing of a Lot and Detached Dwelling Unit in accordance with this Declaration will not be considered the operation of a business or trade. Any Owner who leases a Lot and Detached Dwelling Unit will notify promptly the Association of the existence of the lease and the name of each lessee and occupant.

Section 9.14. Encroachments. No tree, shrub, or planting of any kind on any part of the Property will be allowed to overhang, rest on, or otherwise encroach upon any neighboring Lot, sidewalk, street, pedestrian way, or Common Area in the area below a level of 10 feet. The restriction described in the previous sentence will not apply to the visibility easement areas described in Section 10.09 below and will not apply if a more restrictive height limitation is contained on any Qualified Plat.

Section 9.15. Machinery. No machinery of any kind will be placed, operated, repaired, or maintained upon or adjacent to any Lot or Common Area other than machinery that is usual and customary in connection with the use, maintenance, or construction of a Detached Dwelling Unit and machinery that Declarant or the Association may require for the operation and maintenance of the Property.

Section 9.16. Subdivision and Time Shares. Except in those instances where the Declarant is permitted to further subdivide a Lot in the exercise of its general declarant rights, no Lot will be further subdivided or separated into smaller lots or parcels by any Owner, and no portion of a Lot will be conveyed or transferred by any

Owner without the prior written approval of the Board. No Owner will transfer, sell, assign, or convey any time share in any Lot, and any time share transaction will be void.

Section 9.17. Increased Risk. Nothing will be done or kept by any Owner in or on any Lot, Detached Dwelling Unit, Ancillary Unit, or any other area of the Project that will increase the Association's rate of insurance without the prior written consent of the Board. No Owner will permit anything to be done or kept on or in the Owner's Lot, Detached Dwelling Unit, Ancillary Unit, or any other area of the Project that will result in the cancellation or reduction of insurance on any Detached Dwelling Unit or any insurance of the Association or that would be a violation of any law.

Section 9.18. Drainage Plan. No Ancillary Unit, pool, concrete area, or landscaping will be constructed, installed, placed, or maintained by an Owner on any Lot or any other areas of the Project in any manner that would obstruct, interfere, or change the direction or flow of water as established in the drainage plans for the Project. Except where approved by the Architectural Committee, no dry wells, catch basins, or drainage ponds may be installed on any Lot, and no weep holes or drainage holes may be placed in any boundary fence or wall. No private irrigation wells may be installed anywhere on a Lot.

Section 9.19. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes will not be erected, placed, or maintained on any Lot unless they are erected, placed, or maintained on a Lot in a manner so as to not be Visible From Neighboring Property.

Section 9.20. Basketball Structures. Basketball hoops, backboards, and other elevated sport structures of any type may not be attached to or placed on a Detached Dwelling Unit. If approved by the Architectural Committee prior to use and installation, basketball hoops, backboards, and other elevated sport structures may be installed and maintained in the Open Yard of a Lot (including in front driveways) or in the Private Yard, in either case on a permanent or temporary basis as designated by the Architectural Committee. Portable basketball goals that are approved for use on a Lot may be located in the Open Yard only when in use and will otherwise be stored in the Private Yard when not in use so as to minimize the structure being Visible From Neighboring Property.

Section 9.21. Outside Installations. The outdoor burning of trash, debris, wood, or other materials within the Project is prohibited. The foregoing, however, will not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills. Except as originally installed by the Declarant or as otherwise approved by the Architectural Committee, no spotlights, flood lights, or other high intensity lighting will be placed or utilized upon any Lot so that the light is directed or reflected on any Common Area or any other Lot.

Section 9.22. Fuel Tanks. No fuel tanks of any kind will be erected, placed, or maintained on or under the Property except for propane or similar fuel tanks for pools, gas grills, and similar equipment so long as the fuel tanks are permitted under the ordinances of the City.

Section 9.23. Hazardous Wastes. Except as may be necessary for normal household, landscaping, or automotive uses, no Owner will permit any hazardous wastes (as defined under all applicable federal and state laws), asbestos, asbestos containing material, or any petroleum products or by-products to be kept, dumped, maintained, stored, or used in, on, under, or over any Lot. No gasoline, kerosene, cleaning solvents, or other flammable liquids may be stored in the Common Area.

Section 9.24. Parking of Commercial Vehicles. Except as provided in Section 5.08(c) and (d) or in this section below, Commercial Vehicles may not be parked or stored upon a Lot or anywhere else within the Project. An Owner may make a written request to the Architectural Committee for the approval to store or park a particular Commercial Vehicle within the Project, and the Architectural Committee may approve the storage or parking of the Commercial Vehicle in the Project as established in Section 5.08 above. Commercial Vehicles that are approved for parking or storage on the Lot may be parked within the Project only so long as they are operable and parked only: (i) within a fully enclosed garage located on the Owner's Lot; (ii) in the driveway of the Lot on a Nonrecurring And Temporary Basis and so as to not impede or block pedestrian traffic over any sidewalks; (iii) in a Side Yard Parking Area that is Screened From View; or (iv) on any public or private street within the Project only on a Nonrecurring And Temporary Basis (except as otherwise permitted under A.R.S. § 33-1809). The Board need not approve the parking of any or all types of Commercial Vehicles, and similar types of Commercial Vehicles may be approved for

parking in Side Yard Parking Areas of one Lot but not on other Lots. Any Commercial Vehicle parked in violation of these restrictions may be towed by the Association at the sole expense of the owner of the vehicle if the vehicle remains in violation of these restrictions for a period of 24 hours from the time a notice of violation is placed on the vehicle, and neither the Association nor any of its officers or directors will be liable for trespass, negligence, conversion, or any criminal act by reason of towing the vehicle. The foregoing will not be deemed to prevent the parking or use of temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction, repair, and/or maintenance of a Lot or Detached Dwelling Unit, as long as the Architectural Committee has approved the use and location of these temporary facilities if they are intended to remain anywhere on the Project for more than 24 consecutive hours (irrespective of whether the construction, repair, or maintenance requires the prior approval of the Architectural Committee).

Section 9.25. Parking of Recreational Vehicles. Except as provided in Section 5.08(e) above, Recreational Vehicles may not be stored or parked on a Lot or anywhere else within a Project. Recreational Vehicles will not be permitted to be parked or stored in the driveway of a Lot or in any public or private street, except for temporary parking not to exceed 12 consecutive hours for loading, unloading, or cleaning.

Section 9.26. Personal Vehicles and Use of Garage. Each Lot will have at least one enclosed garage that will be used by the Owner of the Lot for the sole purpose of parking Personal Vehicles, permitted Commercial Vehicles, permitted Recreational Vehicles, household storage purposes, and certain types of permitted vehicle repairs and maintenance as described in Section 9.27 below. Garages may not be used as sleeping quarters or guest accommodations, but garages may be used for hobbies such as art, woodworking, golf club repair, and similar hobbies that do not involve the permanent use of the garage for those activities. The garage door will be maintained by the Owner in good and functioning order and will remain closed except while the garage is in use for cleaning, entry, and exit or permitted repairs of the type described in Section 9.27 below. No garage may be used for non-household storage or any other use that restricts or prevents the garage from being used for the purposes described above. Personal Vehicles that cannot be parked in the garage located on the Lot may be parked in the driveway so long as the Personal Vehicles are operable and are, in fact, operated from time to time. Notwithstanding any less restrictive local or municipal codes, ordinances, or stipulations, Personal Vehicles may be parked in any public or private street within the Project only on a Nonrecurring And Temporary Basis, and no other on-street parking is permitted within the Project (except to the extent permitted under A.R.S. § 33-1809 for those vehicles described in Section 5.08(d) above).

Section 9.27. Vehicle Repairs. Routine maintenance and repair of Personal Vehicles or approved Commercial Vehicles or Recreational Vehicles may be performed within the Owner's garage, or on the driveway located on a Lot, any Side Yard Parking Area or any other portion of the Owner's Lot, but not on any public or private streets or Common Area within the Project. Additionally, Personal Vehicles and approved Commercial Vehicles or Recreational Vehicles may be rebuilt, reconstructed, and repaired (including non-routine repairs) within the Owner's garage only, so long as the Owner's activities are performed at reasonable times and in a reasonable manner and so long as these activities are otherwise not in violation of any local zoning and use laws. During any types of permitted repairs and maintenance as described above (including rebuilding, reconstructing, etc.), the garage door will be kept closed except for entry and exit or ventilation, and then the garage only will remain open to the minimum extent necessary. Except for the purposes of performing the permitted repairs and maintenance of vehicles as outlined above in this Section 9.27, no Personal Vehicle or approved Commercial Vehicle or Recreational Vehicle will be permitted to be or remain on any Lot in a state of disrepair or in an inoperable condition. No vehicle frames, bodies, engines, or other vehicle parts or accessories may be stored anywhere on a Lot except in a garage in connection with permitted repairs and maintenance and then only on a temporary basis for anticipated use on any permitted repair or maintenance that is in process. No portion of a Lot (including the garage) may be used to store fuel or lubricants other than for personal use in amounts that are customarily stored by other Owners within the Project. No portion of a Lot (including a garage) may be used for steam cleaning of engines or as a body shop. Owner may perform any of the permitted types of repairs and maintenance, as described above, only on Personal Vehicles and approved Commercial Vehicles or Recreational Vehicles, and not on any similar type of vehicles that are not owned, used, or leased by Owner or Owner's Occupants.

Section 9.28. Mailboxes. Except when originally installed by the Declarant, no mailboxes, mail posts, or similar items for the receipt of mail will be installed, constructed, or placed on a Lot unless the location, design, height, color, type, and shape are approved by the Architectural Committee. If the Project is developed with NBU's,

cluster boxes, or gang mailboxes, the Association will maintain the community mailboxes to the extent allowed and required by the U.S. Postal Service, and no Owner will be permitted to install or use individual mailboxes on the Owner's Lot.

Section 9.29. Swimming Pools. Except as originally installed by the Declarant, swimming pools, spas, and Jacuzzis may be installed within the Private Yard of a Lot only after the plans and specifications for the pool, pool fencing, and permanent pool equipment are approved by the Architectural Committee. No aboveground pools may be erected, constructed, or installed on a Lot except for toddler pools and wading pools. Each Owner acknowledges that it is solely responsible for the installation of any pool fencing for the Lot. Pools may not be back washed into other Lots, the Common Area, or any portions of the Project other than the Owner's Lot and streets. To the extent fencing is removed to install a permitted pool, the fencing will be replaced immediately after installation of the pool and in a manner substantially similar to the fence condition prior to its removal to install the pool. The Architectural Committee may condition any request to install a pool on the posting of a bond (cash or surety) to ensure reinstallation of any fence removed during pool construction.

Section 9.30. Children's Play Structures. Children's play structures that are Visible From Neighboring Property may be erected only in the Private Yard and only after approval by the Architectural Committee. All bicycles, tricycles, scooters, skateboards, strollers, and similar play equipment must be stored when not in use so as not to be Visible From Neighboring Property.

Section 9.31. Declarant's Exemption. Nothing contained in this Declaration will be construed to prevent the Declarant, any Builder, or their respective agents from constructing, erecting, and maintaining model homes, sales structures, temporary improvements, parking lots, construction trailers, or signs necessary or convenient to the sale or lease of Lots within the Project during the entire period of the sales and marketing efforts of the Declarant, any Builder, or their respective agents. Also, the use restrictions created in Article IX of this Declaration will not apply to any construction activities of Declarant or any Builder.

Section 9.32. Exempt Property. The Exempt Property is not subject to the use restrictions established in this Article IX.

ARTICLE X

CREATION OF EASEMENTS

Section 10.01. Public Utility Easements. Declarant grants and creates a perpetual and non-exclusive easement upon, across, over, and under those portions of the Qualified Plat that may be designated as a public utility easement or p.u.e., for the installation and maintenance of utilities, including electricity, telephone, water, gas, cable television, drainage facilities, sanitary sewer, or other utility lines servicing the Project or any other real property. The areas designated for those easements may include the Common Area or those areas of a Neighborhood depicted on the applicable Qualified Plat. All public utility easements may be used by the provider utility company and the City without the necessity of any additional recorded easement instrument. The public utility easement described above will not affect the validity of any other recorded easements affecting the Project. All utilities and utility lines will be placed underground. No provision of this Declaration, however, will act to prohibit the use of aboveground and temporary power or telephone structures incident to the construction of buildings or structures as needed by the Declarant or any Builder. Public or private sidewalks may be located in the public utility easements. The public utility easements described above will be perpetual unless and until abandoned by resolution of the City.

Section 10.02. Temporary Construction Easements. During the period of Declarant's or any Builder's construction activities within the Project, Declarant reserves a non-exclusive easement for the benefit of itself, all Builders, and their respective agents, employees, and independent contractors on, over, and under those portions of the Project that are reasonably necessary to construct improvements. This temporary construction easement will terminate automatically upon the completion of all construction activities at the Project. This temporary construction easement will not affect any portion of a Lot upon which a Detached Dwelling Unit, permitted Ancillary Unit, or pool is located. In utilizing this temporary construction easement, neither Declarant nor any Builder will be liable or responsible for any damage to any landscaping or improvements located within the temporary construction easement; however, Declarant and all Builders will use (and cause their respective agents,

employees, and independent contractors to use) reasonable care to avoid damage to any landscaping or improvements.

Section 10.03. Easement for Encroachments. Without limitation of the easement for fence encroachments created under Section 5.07(b) above, each Lot and the Common Area will be subject to a reciprocal and appurtenant easement benefiting and burdening, respectively, the Lot or Common Area for minor encroachments created by construction, settling, and overhangs as originally designed or constructed by Declarant or any Builder. This easement will remain in existence for so long as any encroachment of the type described in the proceeding sentence exists and will survive the termination of the Declaration or other Project Documents. This easement is non-exclusive of other validly created easements. This easement for encroachments and maintenance is reserved by Declarant by virtue of the recordation of this Declaration for the benefit of the encroaching Lot and its Owner or the Association, as applicable.

Section 10.04. Easements for Ingress and Egress. A perpetual and non-exclusive easement for pedestrian ingress and egress is created and reserved by Declarant for the benefit of the Declarant and all Owners over, through, and across all sidewalks, paths, recreation trails, walks, and lanes that may be constructed within the Project. Additionally, a perpetual and non-exclusive easement for vehicular ingress and egress to each Lot is created and reserved by Declarant for the benefit of the Declarant and all Owners over and across any Common Area, sidewalks, or easements that separate the driveway of a Lot from any public or private street. The right of access described above is and will remain at all times an unrestricted right of ingress and egress.

Section 10.05. Water Easement. Without limiting any other provision of this Declaration or the Qualified Plat, Declarant grants to the Arizona Water Company and/or the City, as applicable, a non-exclusive and blanket easement on, under, and across the Property for the purpose of installing, repairing, reading, and replacing water meter boxes. This permanent easement will not be deemed to affect any portion of a Lot upon which a Detached Dwelling Unit or permitted Ancillary Unit is located. This easement will be perpetual unless and until abandoned by resolution of the Arizona Water Company and/or the City, as applicable.

Section 10.06. Drainage Easement. Declarant grants to and for the benefit of the City and the Association and all Owners a non-exclusive easement in, through, across, and under the surface of those tracts of Common Area designated on any Qualified Plat as a drainage and/or retention and/or storm water area for the purpose of delivering, storing, and accepting storm water to and from the Project and installing, maintaining, and repairing underground drainage pipes, lines, drains, and other drainage or retention facilities required by the City and approved by the Association (together with the right to ingress and egress to perform the installation, maintenance, or repair). No buildings or similar structures may be erected on these designated tracts of Common Area. Any landscaping that may be planted in these areas must be planted so as to not materially impede the flow of water into, through, over, or under any landscape and drainage tract. All landscaping installed in these areas will be maintained by the Association. This easement will remain in effect during the term of this Declaration.

Section 10.07. Sewer Easement. Declarant grants to the City a non-exclusive easement for the installation, maintenance, and repair of sewer lines and sewage facilities under any area designated on any Qualified Plat as a sanitary sewer easement. This easement will be perpetual unless and until abandoned by resolution of the City.

Section 10.08. Vehicular Non-Access. Where depicted and described by any Qualified Plat, if at all, Declarant grants to the City a non-exclusive vehicular non-access easement across those portions of the Property described on the Qualified Plat. No vehicles may be driven or moved across or over these easement areas to access any adjoining streets or real property. This easement will be perpetual unless and until abandoned by resolution of the City.

Section 10.09. Visibility Easement. Declarant grants to the City a non-exclusive restricted visibility easement on and over those specific areas of those Lots indicated on any Qualified Plat. All structures and landscaping that are located within this restricted visibility easement will have at all times a height no greater than three feet higher than the highest elevation of any adjoining streets. This easement will be perpetual unless and until abandoned by resolution of the City.

Section 10.10. Perimeter Wall Easement. Whether or not depicted on any Qualified Plat, Declarant grants to the Association a nonexclusive easement over those portions of a Lot (not to exceed 10 feet in width) adjoining any perimeter wall for the Project and any Neighborhood as are reasonably necessary to repair, maintain, and replace all such perimeter walls, including the right to access the easement area. Declarant reserves the right, for and on behalf of each Owner, to construct and maintain improvements within this nonexclusive easement area such as landscaping, sprinklers, pool decking, pools, spas, Jacuzzis, and permitted Ancillary Units. In exercising the rights under this easement, the Association will cause all of its workmen (whether employees or third party contractors) to use reasonable care to avoid injury or damage to Owner's improvements and Lot, and the Association will repair (or cause its workmen to repair) all damage to the Owner's Lot or improvements resulting from the acts or omissions of its workmen in the exercise of these easement rights.

Section 10.11. Views Not Guaranteed. Although certain Lots in the Project at any point in time may have particular views, no express or implied rights or easements exist (or are intended to be created by the Project Documents) for views or for the passage of light and air to any Lot. Neither the Declarant nor any Builder nor the Association nor any of the respective directors, officers, partners, principals, agents, or employees of the foregoing have made (or will be deemed to have made) any representation or warranty whatsoever, express or implied, concerning the view that any Lot will have at any time in the future after the date of recordation of this Declaration. Any view that exists at any point in time for a Lot may be impaired or obstructed by further construction within or outside the Project, including, without limitation, the construction of improvements or the installation of landscaping by Declarant, any Builder, or third parties, (including other Owners and residents) and/or by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant or the Association or any Builders with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01. Enforcement.

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

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

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

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

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

Section 11.02. Approval of Litigation.

(a) ***Limits on Initiation of Litigation.*** The Association will not incur any expenses (including, without limitation, attorney fees and costs) to initiate legal proceedings (which, for purposes of this Section, are more fully described in Section 11.02(g) below) or to join as a plaintiff in legal proceedings without the prior approval of the Members, except for any legal proceedings initiated or joined by the Association either to: (i) enforce the use restrictions contained in this Declaration through injunctive relief or otherwise; (ii) enforce the Association Rules or the Design Guidelines through injunctive relief or otherwise; (iii) collect any unpaid Assessments, enforce or foreclose any lien in favor of the Association, or determine the priority of any lien for Assessments; (iv) make a claim against a vendor of the Association or supplier of goods and services to the Association; (v) defend claims filed against the Association (and to assert counterclaims or cross-claims in connection with a defense); or (vi) make a claim for a breach of fiduciary duty by any one or more of the Board of Directors or officers of the Association.

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

(c) ***Prior Approval Disclosures.*** Prior to any vote of the Members, the Association will provide full disclosure of: (i) the nature and description of the claim; (ii) the name and professional background of the attorney proposed to be retained by the Association to pursue the matter; (iii) a description of the relationship (if any) between the attorney and the Board of Directors (or any member of the Board of Directors) or the property management company; (iv) a description of the fee arrangement with the attorney; (v) an estimate of the fees and costs necessary to pursue the claim; (vi) the estimated time necessary to complete the proceedings; and (vii) an affirmative statement from the Board that the action is in the best interests of the Association and its Members.

(d) ***Litigation Fund.*** The costs of any legal proceedings initiated or joined by the Association that are not included in the above exceptions (i.e., Section 11.02(a)(i) through (vi) above) must be financed by the Association with monies that are specifically collected for that purpose, and the Association will not borrow money, use reserve funds, use general funds, or use monies collected for other Association obligations (such as working capital requirements) to initiate or join any such legal proceeding.

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

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

(g) ***Legal Proceedings.*** As used above, the term "**legal proceedings**" includes administration, mediation, arbitration, and judicial actions including any matters covered by the alternative dispute resolution procedures described in Article XIII below. In other words, legal proceedings initiated in accordance with this Section 11.02 also may be subject to the alternative dispute resolution provisions below.

(h) ***Dwelling Unit Actions.*** The procedures and limitations established above with regard to legal proceedings of the Association apply in addition to any requirements of notice, timing, disclosure, and records as outlined in A.R.S. § 12-1361 et seq. and § 33-2001 et seq. with respect to dwelling unit actions.

Section 11.03. General Provisions on Condemnation. If an entire Lot is acquired by eminent domain or if part of a Lot is taken by eminent domain leaving the Owner with a remnant that may not be used practically for the purposes permitted by this Declaration (both instances being collectively referred to as a "**complete condemnation**" of the entire Lot), the award will compensate the Owner for the Owner's entire Lot and the Owner's interest in the Common Area, whether or not any Common Area interest is acquired by the condemning party. Upon the condemnation of an entire Lot, unless the condemnation decree for the complete condemnation provides otherwise, the affected Lot's entire Common Area interest, vote, and membership in the Association, and all common expense liabilities, will be automatically reallocated to the remaining Lots in the Project in proportion to the respective interests, votes, and liabilities of those Lots prior to the condemnation, and the Association will promptly prepare, execute, and record an amendment to the Declaration reflecting these reallocations. For purposes of this Section, each Owner, by acceptance of a deed for a Lot or any interest in a Lot, will be deemed to have appointed the Association, acting by and through the Board, as the Owner's attorney-in-fact for the purposes of executing and recording the above-described amendment to the Declaration. Any remnant of a Lot remaining after a complete condemnation of the type described above will be deemed a part of the Common Area.

Section 11.04. Partial Condemnation of Lot. If only a portion of a Lot is taken by eminent domain and the remnant is capable of practical use for the purposes permitted by this Declaration, the award will compensate the Owner for the reduction in value and its interest in the Common Area. Upon a partial taking, the Lot's interest in the Common Area, votes, and membership in the Association, and all common expense liabilities, will remain the same as that which existed before the taking, and the condemning party will have no interest in the Common Area, votes, or membership in the Association, or liability for the common expenses.

Section 11.05. Condemnation of Common Area. If a portion of the Common Area is taken by eminent domain, the award will be paid to the Association and the Association will cause the award to be utilized for the purpose of repairing and restoring the Common Area, including, if the Board deems it necessary or desirable, the replacement of any common improvements. Any portion of the award not used for any restoration or repair of the Common Area will be divided among the Owners and First Mortgagees in proportion to their respective interests in the Common Area prior to the taking, as their respective interests may appear.

Section 11.06. Severability. Invalidation of any one or any portion of these covenants and restrictions by judgment or court order will not affect the validity of any other provisions of the Project Documents, and these other provisions of the Project Documents will remain in full force and effect.

Section 11.07. Term. The covenants and restrictions of this Declaration will run with and bind the land for a term of 30 years from the date this Declaration is recorded, after which time they will be automatically extended for successive periods of 10 years for so long as the Lots continue to be used for Single Family Residential

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

Section 11.08. Amendment. This Declaration and/or the Qualified Plat may be amended as provided in this Declaration. During the first 30-year term of this Declaration and except as otherwise provided in Sections 11.12 and 13.05, amendments will be made only by a recorded instrument executed on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association. All amendments will be deemed adopted only if approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of 75% or more of the total number of eligible votes in the Association. After the initial 30-year term, amendments will be made by a recorded instrument approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of two-thirds or more of the total number of eligible votes in the Association, and the amendment will be executed on behalf of the Association by an officer of the Association designated for the purpose or, in the absence of designation, by the President of the Association. Subject to any limitation described in Section 11.12 below, Declarant unilaterally may amend this Declaration or Qualified Plat or the other Project Documents prior to the recordation of the first deed for any Lot within the Project to an Owner other than Declarant or the recordation of a contract to sell a Lot to an Owner other than Declarant. In addition to and notwithstanding the foregoing, any amendment to the uniform rate of assessments established under Section 4.05 above will require the prior written approval of two-thirds or more of the holders of First Mortgages on the Lots.

Section 11.09. Government Financing. If the financing of any Institutional Guarantor is applicable to the Property, any amendment to the Declaration made by the Declarant pursuant to Section 11.12 and any Annexation Amendment made by the Declarant will contain either: (i) the approval of the Institutional Guarantor; or (ii) an affidavit or certification that the Institutional Guarantor's approval has been requested in writing but that the Institutional Guarantor has not either approved or disapproved the amendment within 30 days of Declarant's request.

Section 11.10. Construction. This Declaration will be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a master plan community consisting of Detached Dwelling Units for Single Family Residential Use and Common Area with maintenance as provided in this Declaration and the other Project Documents. The provisions of this Declaration will be construed in a manner that will effectuate the inclusion of additional lots pursuant to Article XII. Section and Article headings have been inserted for convenience only and will not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration (including any defined terms), regardless of the number and gender in which they are used, will be deemed and construed to include any other number and any other gender as the context or sense of this Declaration may require, with the same effect as if the number and words had been fully and properly written in the required number and gender. Whenever the words and symbol "**and/or**" are used in this Declaration, it is intended, if consistent with the context, that this Declaration be interpreted and the sentence, phrase, or other part be construed in both its conjunctive and disjunctive sense, and as having been written twice, once with the word "**and**" inserted, and once with tile word "**or**" inserted, in the place of words and symbol "**and/or.**" Any reference to this Declaration will automatically be deemed to include all amendments to this Declaration.

Section 11.11. Notices. Unless an alternative method for notification or the delivery of notices is otherwise expressly provided under law, any notice that is permitted or required under the Project Documents must be delivered in the manner established in the Association's Bylaws.

Section 11.12. General Declarant Rights. Declarant, for and on behalf of itself and any Builder, specifically reserves the right to construct improvements within the Project that are consistent with this Declaration or the Qualified Plat and to change the unit mix of the Lots described in the Declaration or the Qualified Plat, without the vote of any Members. During any period of Declarant Control, Declarant reserves the right to: (i) amend the Declaration or Qualified Plat without the vote of any Members to comply with applicable law or correct any error or inconsistency in the Declaration, so long as the amendment does not materially and adversely affect the rights of any Owner; (ii) amend the Declaration to conform with any rules or guidelines of any Institutional Guarantor; or (iii) without the vote of any Members (but with the consent of the Institutional Guarantor, if applicable), withdraw the Property or portions of the Property from this Declaration and subdivide Lots, convert

Lots into Common Area, and convert Common Area into Lots. Additionally, during the period of Declarant Control, Declarant reserves the right to designate one or more Builders for the Project that will be entitled to exercise the rights and powers reserved to a Builder under the Project Documents and that will be subject to the covenants and restrictions of the Project Documents.

Section 11.13. Management Agreements. Any management agreement entered into by the Association or Declarant may be made with an affiliate of Declarant or a third-party manager and, in any event, will be terminable by the Association with or without cause and without penalty upon 30 days written notice. The term of any management agreement entered into by the Association or Declarant may not exceed one year and may be renewable only by affirmative agreement of the parties for successive periods of one year or less. Any property manager for the Project or the Association will be deemed to have accepted these limitations, and no contrary provision of any management agreement will be enforceable. Nothing in the Project Documents will be deemed to prevent a Subsidiary Association or Builder from entering into a property management agreement with respect to the administration and operation of a Subsidiary Declaration.

Section 11.14. No Partition. There will be no partition of any Lot, nor will Declarant or any Owner or other person acquiring any interest in any Lot, or any part of the Lot, seek any partition.

Section 11.15. Declarant's Right to Use Similar Name. The Association irrevocably consents to the use by any other profit or nonprofit corporation that may be formed or incorporated by Declarant of a corporate name that is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of the other corporation to make the name of the Association distinguishable from the name of the other corporation. Within 5 days after being requested to do so by the Declarant, the Association will sign all letters, documents, or other writings as may be required by the Arizona Corporation Commission (or any other governmental entity) in order for any other corporation formed or incorporated by the Declarant to use a corporate name that is the same or deceptively similar to the name of the Association.

Section 11.16. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by the Declaration and the other Project Documents will be joint and several.

Section 11.17. Conflicts. If there are any discrepancies, inconsistencies, or conflicts between the provisions of this Declaration and the other Project Documents, the provisions of this Declaration will prevail in all instances.

Section 11.18. Survival of Liability. The termination of membership in the Association will not relieve or release any former Member from any liability or obligation incurred under or in any way connected with the Association during the period of membership or impair any rights or remedies that the Association may have against the former Member arising out of or in any way connected with the membership and the covenants and obligations incident to the membership.

Section 11.19. Waiver and Approvals. The waiver of or failure to enforce any breach or violation of the Project Documents will not be deemed a waiver or abandonment of any provision of the Project Documents or a waiver of the right to enforce any subsequent breach or violation of the Project Documents. The foregoing will apply regardless of whether any person affected by the Project Documents (or having the right to enforce the Project Documents) has or had knowledge of the breach or violation. Whenever the approval or consent of the Declarant, Association, Board, or Architectural Committee is required under the Project Documents, the approval or consent may be given or withheld in the sole discretion of the approving party, unless the Project Documents otherwise specify a different standard for approval.

Section 11.20. Attorney Fees. Without limiting the power and authority of the Association to incur (and assess an Owner for) attorney fees as part of the creation or enforcement of any assessment, if an action is instituted to enforce any of the provisions contained in the Project Documents, the party prevailing in any action will be entitled to recover from the other party all reasonable attorneys' fees and court costs. If the Association is the prevailing party in the action, the amount of attorney fees and court costs may be deemed all or part of a special assessment against the Lot and Owner involved in the action.

Section 11.21. Security. EACH OWNER UNDERSTANDS AND AGREES THAT NEITHER THE ASSOCIATION, DECLARANT, OR ANY BUILDER (NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) ARE RESPONSIBLE FOR THE ACTS OR OMISSIONS OF ANY THIRD PARTIES OR OF ANY OTHER OWNER OR THE OWNER'S PERMITTEES RESULTING IN PROPERTY DAMAGE, BODILY INJURY, PERSONAL INJURY, OR MARKETABILITY. ANY SECURITY MEASURES OR DEVICES (INCLUDING GATED ENTRIES, SECURITY GUARDS, GATES, PRIVATE SECURITY ALARMS, OR PATROL) THAT MAY BE USED AT THE PROJECT WILL COMMENCE AND BE MAINTAINED BY THE ASSOCIATION SOLELY THROUGH A MAJORITY VOTE OF THE BOARD, AND EACH OWNER UNDERSTANDS THAT ANY SECURITY MEASURES OR DEVICES THAT ARE IN EFFECT AT THE TIME HE OR SHE ACCEPTS A DEED FOR A LOT (OR OTHERWISE BECOMES AN "OWNER") MAY BE ABANDONED, TERMINATED, OR MODIFIED BY A MAJORITY VOTE OF THE BOARD. THE COMMENCEMENT OF SECURITY DEVICES OR CONTROLS WILL NOT BE DEEMED TO BE AN ASSUMPTION OF ANY DUTY ON THE PART OF THE ASSOCIATION, DECLARANT, OR ANY BUILDER WITH RESPECT TO THE PROJECT AND ITS OWNERS.

Section 11.22. Adjacent or Nearby Properties. EACH OWNER UNDERSTANDS AND ACKNOWLEDGES THAT THE PROJECT IS ADJACENT OR CLOSE TO PROPERTIES THAT ARE USED FOR AGRICULTURAL PURPOSES, DAIRY OPERATIONS, EQUESTRIAN OR ANIMAL OPERATIONS, OR COMMERCIAL PURPOSES, AND THAT THESE USES OF THE ADJACENT PROPERTIES SHOULD BE EXPECTED TO CONTINUE INDEFINITELY. CONSEQUENTLY, OWNERS WITHIN THE PROJECT MAY EXPERIENCE ODORS, NOISE, DUST, FUMES, FLIES, COMMERCIAL VEHICLE TRAFFIC, AND OTHER ANNOYANCES TYPICALLY ASSOCIATED WITH THE USES ON THESE PROPERTIES. BY BECOMING AN OWNER, EACH OWNER (ON BEHALF OF ITSELF AND ALL OTHER OWNER'S PERMITTEES) SPECIFICALLY ACKNOWLEDGES AND ACCEPTS THESE ADJACENT AND NEARBY USES AND RELEASES THE DECLARANT, THE ASSOCIATION, AND THE BUILDERS (AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, MEMBERS, DIRECTORS, PARTNERS, EMPLOYEES AND AGENTS) FROM ALL CLAIMS, LOSS, AND, DAMAGE THAT MAY ARISE OUT OF THE LOCATION OF THE PROJECT NEAR THE PROPERTIES WITH THESE USES.

Section 11.23. Adjacent or Nearby Uses. EACH OWNER UNDERSTANDS AND ACKNOWLEDGES THAT THE PROJECT IS LOCATED IN THE VICINITY OF PROPERTY THAT IS CURRENTLY OPERATED OR IN THE FUTURE MAY BE OPERATED FOR: (i) A PROPOSED PUBLIC OR PRIVATE PARK, SCHOOL, OR COMMERCIAL USES, INCLUDING ITS PRESENT AND FUTURE USES FOR EVENTS, EMERGENCY SERVICE VEHICLES, BALL FIELDS AND RELATED LIGHTING, AND COMMUNITY AND SPECIAL EVENTS. AS A RESULT, PEOPLE RESIDING WITHIN THE PROJECT MAY EXPERIENCE NOISE, VIBRATIONS, DUST, FUMES, SPILLAGE, FLYING OBJECTS, AND OTHER INTERFERENCES OR ANNOYANCES CAUSED BY THESE OR OTHER USES. BY BECOMING AN OWNER, EACH OWNER (ON BEHALF OF ITSELF AND ALL OWNER'S PERMITTEES) SPECIFICALLY ACKNOWLEDGES AND ACCEPTS THESE ADJACENT USES AND RELEASES THE DECLARANT, THE BUILDERS, AND ASSOCIATION (AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, MEMBERS, DIRECTORS, PARTNERS, EMPLOYEES, AND AGENTS) FROM ALL LIABILITY, CLAIMS, LOSS, AND DAMAGE THAT MAY ARISE OUT OF THE LOCATION OF THE PROJECT NEAR THESE USES.

ARTICLE XII

DEVELOPMENT PLAN AND ANNEXATION

Section 12.01. Proposed Development. Declarant currently contemplates the development of a master planned community that, if completed, may encompass more real property than that currently contained in the Master Plan Area or described as the Property. The foregoing, however, is not a representation, warranty, or assurance by the Declarant that the contemplated development will be completed. Each Owner acknowledges that it has not relied upon any written, oral, or implied representation, warranty, or expression made by Declarant, any Builder, or any of their respective agents, regarding whether: (i) the contemplated development described in the Development Agreement, the Site Plan, or any master plan will be completed or carried out; (ii) any land now or in the future owned by Declarant or any Builder (including the Parcels) will be subject to this Declaration or developed for a particular use; (iii) any land now or in the future owned by Declarant or any Builder was once or is used for a

particular use or whether any prior or present use will continue in effect; or (iv) any common amenities (such as parks, playgrounds, schools, community pools, etc.) contemplated for future phases actually will be constructed. Neither Declarant nor any Builder need construct Detached Dwelling Units on any Lot subject to the Declaration in any particular order or progression, but Declarant or any Builder may build Detached Dwelling Units on any Lot subject to this Declaration in any order or progression that Declarant or any Builder desires to meet its needs or desires or the needs or desires of a potential purchaser. Each Owner of a Lot, by acceptance of a deed for that Lot (or otherwise becoming an Owner), acknowledges that nothing that may have been represented to a purchaser by any real estate broker, or sales person that represents the Declarant, any Builder, or their respective affiliates or by anyone else will be deemed to create any implied covenants and restrictions with respect to the use of any Property subject to the Declaration or adjoining the Property.

Section 12.02. Annexation Without Approval.

(a) ***Annexable Property.*** From time to time and at any time until 10 years from the date of recordation of this Declaration, Declarant will have the unilateral right, privilege, and option to conditionally annex and subject to the provisions of this Declaration all or any portion of the Annexable Property, as defined below, by recording in the Official Records of Pinal County, Arizona, an amendment to this Declaration ("**Annexation Amendment**"). For purposes of this Declaration, the term "**Annexable Property**" will mean any real property located outside of the Master Plan Area.

(b) ***Annexation Amendment.*** An Annexation Amendment conditionally annexing all or any portion of the Annexable Property to this Declaration will not require the vote or consent of any Member or First Mortgagee. The Annexation Amendment must be signed by the Declarant only, must describe the lots and common area tracts to be included within the conditional annexation, and must expressly refer to the Declaration and recite that the lots and common area tracts are annexed into the Declaration and Project. The Annexation Amendment also may contain any modifications to this Declaration as may be necessary to reflect the different character or use of the Annexable Property, including a description of any additional Areas of Association Responsibility. Declarant will have the unilateral right to transfer to any other person the right, privilege, and option to annex the Annexable Property so long as the transfer of the right is memorialized in a written and recorded Annexation Amendment.

(c) ***Distinguished from Parcel Declaration.*** The annexation provisions of this Section 12.02 and Section 12.03 below apply to real property located outside the Master Plan Area, and Parcels within the Master Plan Area are subjected to the Project Documents (if at all) through one or more Parcel Declarations.

Section 12.03. Annexation With Approval. Upon the written consent or affirmative vote of at least two thirds of the Class A Members of the Association (and further upon the written consent of the Declarant and any applicable Builder so long as Declarant or the applicable Builder is a Member of the Association), the Association may annex real property other than the Annexable Property to the provisions of this Declaration by recording in the Official Records of Pinal County, Arizona, a "**Supplemental Declaration**" describing the real property being annexed. Any Supplemental Declaration will be signed by the President and Secretary of the Association and the owner or owners of the properties being annexed, and any annexation under this Section 12.03 will be effective upon its recordation.

Section 12.04. Effect of Annexation. When a phase has been included (annexed) under this Declaration, the Owners of the Lots in the additional phase will have the same rights, duties, and obligations (including the obligation to pay assessments) under this Declaration as the Owners of Lots in the first phase (i.e., the Lots initially covered by this Declaration) and vice versa.

Section 12.05. No Assurance on Annexed Property. Declarant makes no assurances that all or any part of the Annexable Property or any other property will be annexed into the Project, and Declarant makes no assurances as to the exact type, location, or price of buildings and other improvements to be constructed on any annexed property. Declarant makes no assurances as to the exact number of Lots that may be added by any annexed property. Declarant makes no assurances as to the type, location, or price of improvements that may be constructed

on any annexed property; however, the improvements will be generally consistent in construction quality with the improvements constructed on the real property described in Exhibit "A" attached to this Declaration.

ARTICLE XIII

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Section 13.01. Dispute Resolution Agreement.

(a) ***Alternative Dispute Resolution.*** All Bound ADR Parties, as identified and defined below, agree that it is in their respective best interests to encourage the amicable resolution of claims, grievances, controversies, disagreements, or disputes involving the Project or the Project Documents in order to avoid or limit wherever possible the emotional and financial costs of litigation. Accordingly, each Bound ADR Party covenants and agrees that all Covered Claims, as defined below, between one or more Bound ADR Party must be resolved using the dispute resolution procedures set forth below in this Declaration and the Bylaws in lieu of filing a lawsuit or initiating administrative proceedings. The Board is empowered to impose and enforce these procedures and rules for alternative dispute resolution.

(b) ***Bound Parties.*** As used in the Project Documents, the term "**Bound ADR Parties**" means collectively: (i) the Declarant and its affiliates, general contractors, subcontractors, brokers, and their respective agents, employees, and representatives (collectively, the "**Declarant Parties**"); (ii) any Builder, any Land Banker for the Builder, and their respective affiliates, general contractors, subcontractors, brokers, and their respective agents, employees, and representatives (collectively, the "**Builder Parties**"); (iii) the Association and its officers, board members, and committee members (collectively, the "**Association Parties**"); (iv) all Owners and all of Owner's Permittees including all future Owners and Owner's Permittees (collectively, the "**Owner Parties**"); (v) all Subsidiary Associations; and (vi) the property manager or Association manager and any person not subject to this Declaration who voluntarily agrees to be subject to the dispute resolution procedures described below. The Bound ADR Parties include all officers, directors, members, partners, principals, managers, and committee members of the foregoing. Unless they otherwise agree, Mortgagees and Institutional Guarantors are not Bound ADR Parties.

(c) ***Covered Claims.*** The general intent of the Project Documents is to require all claims involving the Owners, the Project, or the Project Documents to be handled under the alternative dispute resolution procedures established in the Project Documents. Consequently, as used in the Project Documents, the term "**Covered Claims**" means all claims, grievances, controversies, disagreements, or disputes that may arise in whole or in part out of: (i) the interpretation, application, or enforcement of the Declaration or the other Project Documents; (ii) any alleged violation of the Project Documents by any of the Bound ADR Parties; (iii) the authority of the Association Parties or the Declarant Parties to take or not take any action under the Project Documents; (iv) the failure of the Declarant Parties or the Association Parties to properly conduct elections, give adequate notice of meetings, properly conduct meetings, allow inspection of books and records, establish adequate warranty and reserve funds, or otherwise operate and administer the Association, its affairs, or its funds; (v) the performance or non-performance by any of the Bound ADR Parties of any of their respective obligations or responsibilities under the Project Documents to or on behalf of any other Bound ADR Party; (vi) the design or construction of any of the Detached Dwelling Units within the Project (other than matters of aesthetic judgment by the Architectural Committee or the Board, all of which are not subject to the alternative dispute resolution procedures or legal action) including construction defects, surveys, soil conditions, grading specifications, installations, etc.; or (vii) any alleged violation or defect with respect to the maintenance or construction of the Common Area or any improvements or landscaping on the Common Area or Areas of Association Responsibility. The term "**Alleged Defects**" means those Covered Claims described in subsections (vi) and (vii) above (including any homeowner association dwelling action of the type described in A.R.S. § 12-1361 et seq. and/or § 33-2001, et seq.). The term "**Covered Claims**," however, specifically does not include any Exempt Claims of the type described below.

Section 13.02. Exempt Claims. The following claims, grievances, controversies, disagreements, and disputes (each an "**Exempt Claim**" and, collectively, the "**Exempt Claims**") are exempt from the alternative dispute

resolution provisions described in this Declaration and may be enforced in any manner permitted under law or equity:

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

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

(i) Title to any Lot or Common Area;

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

(iii) Solely a matter between a Subsidiary Association and any Owner that is a member of that Subsidiary Association relating to the interpretation or enforcement of a Subsidiary Declaration (so long as a resolution of that matter does not and cannot have an affect on the interpretation, application, or enforcement of the Declaration or the other Project Documents);

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

(v) The breach of fiduciary duty by any one or more of the Association Parties;

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

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

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

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

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

(e) ***Separate Written Contracts***. Any action arising out of any separate written contract between Owners, between the Declarant and any Owner, between Declarant and any Builder, and between any Builder and a Land Banker that would constitute a cause of action under the laws of the State of Arizona regardless of the existence of the Project Documents or the Owner's ownership of a Lot in the Project (e.g., an Owner owns a computer supply business and furnishes, through proper orders, Declarant with computers for work that Declarant fails to pay for; and

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

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

Section 13.03. Enforcement of Resolution. The agreement of the Bound ADR Parties to negotiate, mediate, and arbitrate all Covered Claims, as described in this Declaration, is specifically enforceable under the applicable arbitration laws of the State of Arizona. After resolution of any Covered Claim through the negotiation, mediation, or arbitration provisions of the Project Documents, if any Bound ADR Party fails to abide by the terms of any agreement, settlement, or arbitration award, any other Bound ADR Party may file suit or initiate administrative proceedings to enforce the agreement or arbitration award without the need to again comply with the procedures set forth above. In this case, the Bound ADR Party taking action to enforce the agreement or arbitration award is entitled to recover from the non-complying Bound ADR Party (or if more than one non-complying Bound ADR Party, from all non-complying Bound ADR Parties pro rata) all costs incurred in enforcing the agreement or arbitration award, including, with limitation, attorney fees, and court costs.

Section 13.04. Alleged Defects. If any Owner Parties, any Subsidiary Association, or the Association Parties desire or intend to bring a claim of any sort against the Declarant Parties or the Builder Parties for an Alleged Defect, the following provisions will apply to provide full and fair notice of the existence of the Alleged Defect and an opportunity to repair or correct the Alleged Defect. The notice, right of entry, right of inspection, and right to repair, as described below, are pre-conditions to (and must be satisfied before) the commencement of any alternative dispute resolution procedures for a Covered Claim that constitutes an Alleged Defect.

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

(b) ***Right to Enter.*** Within a reasonable time after the receipt by the Declarant Parties and/or Builder Parties, as the case may be, of written notice of the Alleged Defect (or independent discovery by the Developer Parties or any Builder Parties of a possible Alleged Defect), the Declarant Parties and/or Builder Parties, as the case may be, will have the right to enter the Project and any affected Lot or Common Area to inspect, test, and, if deemed necessary or advisable by the Declarant Parties and/or Builder Parties, as the case may be, in their sole discretion, cause the repair or correction of the Alleged Defect. All tests, inspections, and applicable repairs may be made by the Declarant Parties and/or Builder Parties, as the case may be, or their agents or independent contractors (including contractors and subcontractors) as they may deem necessary or desirable under the circumstances but can be commenced only after reasonable written notice by the Declarant Parties and/or Builder Parties, as the case may be, to the Defect Claimant and must be made only during normal business hours.

(c) ***Testing and Restoration.*** In performing the tests, inspections, or repairs, as applicable, the Declarant Parties and/or Builder Parties, as the case may be, will be entitled to utilize methods or take actions that it deems appropriate or necessary, and the sole obligation of the Declarant Parties and/or Builder Parties, as the case may be, with respect to the Defect Claimant will be to restore the affected area as close as reasonably possible to its condition prior to the testing, investigations, or repairs. No statute of limitations will be tolled during any testing, investigation, or repair period.

(d) ***No Extension of Warranties.*** The existence of this right to notice and an opportunity to inspect and/or cure is irrevocable but will not be deemed to impose any obligation on the Declarant Parties and/or Builder Parties, as the case may be, to test, inspect, or repair any Alleged Defect or to establish or extend any applicable warranty of any builder, developer, or seller (including the Declarant Parties and/or Builder Parties, as the case may be) that may be applicable to the Lot or Common Area. Notwithstanding Section 13.05 below, the provisions of this Section 13.04 may not be modified, amended, waived, or terminated in any manner during any period of time that the Declarant Parties and/or Builder Parties, as the case may be, or their affiliates or contractors may remain liable or responsible for the Alleged Defect or any

resulting injury or damage from the Alleged Defect, without the prior and express written consent of the Declarant Parties and/or Builder Parties, as the case may be, given in a recorded instrument.

(e) ***Association Action for Alleged Defect.*** In addition to obtaining the approvals to litigation described in Section 11.02 above, the Association, prior to commencing an alternative dispute resolution action for an Alleged Defect and concurrent with providing the disclosures to the Members described in Section 11.02(c) above, must provide written notice to the Members describing: (i) a description of the attempts of the Declarant Parties and/or Builder Parties, as the case may be, to correct the Alleged Defect and the opportunities provided to the Declarant Parties and/or Builder Parties, as the case may be, to correct the Alleged Defect; (ii) a copy of any reports prepared by any engineer or construction inspector for the Association that describes the Alleged Defect and the scope of work necessary to correct the Alleged Defect; and (iii) the estimated costs necessary to correct the Alleged Defect.

(f) ***Recoveries for Alleged Defects.*** Any amounts recovered by a Defect Claimant in an action for an Alleged Defect, whether attributable to the cost to repair or replace, any diminution in value, or consequential damages, must be first used to correct or repair the Alleged Defect to ensure the value and attractiveness of the Project as a whole and each specific Neighborhood.

(g) ***Specific Neighborhoods.*** To the extent any claim of an Alleged Defect involves only one Builder or one Neighborhood but has been approved by the requisite number of members under Section 11.02 above, the Association will have the power to allocate all cost associated with the Alleged Defect litigation to the Owners of the applicable Neighborhood.

(h) ***Statutory Rights and Requirements*** The requirements and limitations established in the Project Documents with respect to actions for Alleged Defects are intended to be in addition to, and not in lieu of, the requirements of A.R.S. § 12-1361 et seq. and/or A.R.S. § 33-2001 et seq. with respect to notice, opportunity to cure, opportunity to repair, costs, and offers of settlement. To the extent either the Project Documents or the Arizona statutes impose a higher or greater standard than the other, the higher or greater standard will apply. To the fullest extent possible, the Project Documents and the Arizona statutes should be read in a manner consistent with each other.

Section 13.05. Amendments to Article XIII. Except after the Mandatory ADR Period as defined below, the alternative dispute resolution procedures established in Article XIII of this Declaration may not be modified, amended, terminated, or waived in any manner without the prior and express written consent of Declarant and all Builders. The prior and written consent of the Declarant and all Builders must be evidenced only by a recorded instrument. The **"Mandatory ADR Period"** means the period of time that commences with the recordation date of this Declaration and ends on the earlier to occur of: (i) the termination of this Declaration under Section 11.07 above; or (ii) 10 years after the sale of the last Lot owned by the Declarant or any Builder. After the Mandatory ADR Period, the alternative dispute resolution procedures of Article XIII may be modified, amended, or terminated in accordance with the procedures established in the Project Documents; however, to the extent any Covered Claim still involves the Declarant Parties or any Builder Parties, the Declarant Parties or any Builder Parties, as applicable, can elect for the Covered Claim to be governed by the alternative dispute resolution procedures previously contained in the Project Documents (as though not modified, amended, or terminated). Nothing contained in this Section 13.05 is intended to shorten, modify, or amend the provisions of Section 13.04 with respect to the notice and opportunity to inspect and/or cure an Alleged Defect.

Dated as of 2-10-05, 2005 ("**Execution Date**").

"**Declarant**"

MBC - Heartland, LLC, an Arizona limited liability company

By: _____
Name: DAVID E. CORNWALL
Title: MANAGER

State of Arizona)
) ss.
County of MARICOPA)

The foregoing instrument was acknowledged before me this 10th day of February, 2005, by DAVID E CORNWALL, the MANAGER of MBC - Heartland, LLC, an Arizona limited liability company, who executed the foregoing on behalf of the company, being authorized so to do for the purposes therein contained.

OFFICIAL SEAL
HEATHER M. BAKER
NOTARY PUBLIC - STATE OF ARIZONA
MARICOPA COUNTY
My Commission Expires Aug. 8, 2008

_____
Notary Public

My Commission Expires: August 8, 2008

EXHIBIT "A"
TO
DECLARATION OF HOMEOWNERS BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
HEARTLAND MASTER PLANNED COMMUNITY

(legal description of Master Plan Area)

Section 20, Township 5 South, Range 8 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona;

EXCEPTING therefrom that portion of the Southeast quarter of said Section 20 as conveyed to the City of Coolidge in Docket 1785, Page 97:

COMMENCING for a tie at 1 inch iron pipe marking the Southeast corner of said Section 20 from which the South quarter corner of Section 20 bears South 89°28'45" West, 2647.69 feet distance;
THENCE from said Southeast corner North 39°41'25" West, 51.59 feet to a point on the Westerly side of a 33.00 foot wide roadway easement as described in Docket 375, Page 572, at a point 40.00 feet distant from the Southerly boundary of said Section 20 and the TRUE POINT OF BEGINNING of the herein described parcel;
THENCE South 89°28'45" West, parallel with the Southerly boundary of said Section 20, a distance of 2614.64 feet
THENCE North 00°07'35" East, 30.00 feet;
THENCE North 89°28'45" East, 2614.63 feet
THENCE South 00°04'21" West, 30.00 Feet to the TRUE POINT OF BEGINNING

EXHIBIT "B"
TO
DECLARATION OF HOMEOWNERS BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
HEARTLAND MASTER PLANNED COMMUNITY

(Property initially subject to Declaration)

Lots 1 through 165, inclusive, Lots 171 through 226, inclusive, Lots 232 through 289, inclusive, and Lots 1001 through 1267, inclusive Tracts "A" through "Z", inclusive, and Tracts "AA" through "ZZ", inclusive, according to the Final Plat for Heartland Unit 1, recorded on April 13, 2004, in Cabinet E, Slide 061, as re-platted in part on December 7, 2004, in Cabinet E, Slide 149, Official Records of Pinal County, Arizona.