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Attn: Builder Services

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE RESERVE AT SAGUARO PARK**

**DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
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**DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE RESERVE AT SAGUARO PARK**

This Declaration of Covenants, Conditions, and Restrictions for The Reserve at Saguaro Park is made this ____ day of _____, 2007, by First American Title Insurance Company, a California corporation as Trustee under Trust No. 9143, as Trustee only and not otherwise.

ARTICLE 1

DEFINITIONS

1.1 "Additional Property" means any real property, together with the Improvements located thereon, located not more than one (1) mile from the exterior boundaries of the property described on Exhibit A.

1.2 "Annual Assessments" means the Assessments levied pursuant to Section 6.2.

1.3 "Articles" means the articles of incorporation of the Association, as amended from time to time.

1.4 "Assessable Property" means each Lot, but excluding any Exempt Property.

1.5 "Assessment" means an Annual Assessment, Parcel Assessment or Special Assessment.

1.6 "Assessment Lien" means the lien created and imposed by Article 6.

1.7 "Assessment Period" means the period set forth in Section 6.6.

1.8 "Association" means The Reserve at Saguaro Park Community Association, an Arizona nonprofit corporation, and its successors and assigns.

1.9 "Association Land" means the private streets, landscape area and any other land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest, easement or license for as long as the Association is the owner of the fee or holds such leasehold interest, easement or license.

1.10 "Association Rules" means the rules adopted by the Board pursuant to Section 5.3, as amended from time to time.

1.11 "Board" means the board of directors of the Association.

1.12 "Building Envelope" means the area on a Lot within which Improvements are permitted, as designated by the Declarant and/or the Design Review Panel.

1.13 "Bylaws" means the bylaws of the Association, as amended from time to time.

1.14 "Common Area" means: (a) all Association Land; (b) all land, and the Improvements situated thereon, within the Project which the Declarant indicates on a Plat or other Recorded instrument is to be conveyed to the Association for the benefit and use of the Members; (c) all land, and the Improvements situated thereon, which is situated within the boundaries of a Lot and which is designated on a Plat Recorded by the Declarant or approved by the Declarant or the Association as land which is to be improved, maintained, repaired and replaced by the Association; (d) all land, and the Improvements situated thereon, within or adjacent to the Project which the Declarant indicates on a Plat or other Recorded instrument is to be used for landscaping, drainage or water retention or flood control for the benefit of the Project or the general public; (e) all real property, and the Improvements situated thereon, within or adjacent to the Project located within dedicated rights-of-way with respect to which neither the County nor any other governmental entity has accepted responsibility for the maintenance thereof, but only until such time as the County or another governmental entity has accepted all responsibility for the maintenance, repair and replacement of such areas, and only if the specific areas to be maintained, repaired and replaced by the Association pursuant to this clause (e) have been expressly approved by either the Declarant or the Board; and (f) all land, and the Improvements situated thereon, which is designated in a Recorded amendment to this Declaration as Parcel Assessment Area.

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

1.16 "County" means Pima County, Arizona.

1.17 "Declarant" means Trust No. 9143 of First American Title Insurance Company, its successors and any person or entity to whom it may expressly assign its rights under the Declaration.

1.18 "Declarant Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which the Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.19 "Declaration" means this Declaration of Protective Covenants, Conditions and Restrictions, as amended from time to time.

1.20 "Design Review Panel" means the committee established pursuant to Section 5.11.

1.21 "Design Review Rules" means the rules, criteria and guidelines adopted by the Design Review Panel pursuant to Section 5.11, as amended or supplemented from time to time.

1.22 "Developer" means any Person (other than the Declarant) who is in the business of developing, selling or leasing real property and who acquires one or more Lots in connection with, and in the course of, such business, for the purpose of developing, selling or leasing such Lots.

1.23 "Exempt Property" means: (a) all land and improvements owned by, or dedicated to and accepted by, the United States, the State of Arizona, the County or any other governmental entity, or any political subdivision of any of them, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective; and (b) all Association Land.

1.24 "First Mortgage" means a Mortgage Recorded against a Lot which has priority over all other Mortgages Recorded against that Lot.

1.25 "Improvement" means: (a) any Residential Unit, building, fence or wall; (b) any swimming pool, tennis court, basketball court, road, driveway, parking area or satellite dish; (c) any Landscaping; (d) any statuary, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot); and (e) any other structure of any kind or nature.

1.26 "Landscaping" means any and all shrubs, trees, plants, hedges, grass, groundcovers, landscaping improvements and other plantings or pavements of every type and kind.

1.27 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot (or part thereof), including an assignee of the lessee's or tenant's interest under a lease.

1.28 "Lot" means a portion of the Project intended for independent ownership and residential use and designated as a lot on any Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.29 "Maximum Annual Assessment" shall have the meaning given such term in Subsection 6.3.2.

1.30 "Member" means any Person who is a Member of the Association as provided in Section 5.7.

1.31 "Membership" means a membership in the Association.

1.32 "Mortgage" means a deed of trust or a mortgage Recorded against a Lot.

1.33 "Mortgagee" means a beneficiary under a deed of trust, or a mortgagee under a mortgage, Recorded against a Lot, and "First Mortgagee" means such a beneficiary or mortgagee under a First Mortgage.

1.34 "Natural Open Space" means any area of undisturbed natural desert with no man-made improvements, including the "NOS" (natural open space) shown on the Plat. The Natural Open Space encompasses all portions of a Lot outside of that Lot's Building Envelope (but excluding

driveways and paths providing access from the street to a Residential Unit which are approved by the Design Review Panel in accordance with Section 3.2).

1.35 "Occupant" means any Person other than an Owner who occupies or is in possession of a Lot, or any portion thereof or building or structure thereon, whether as a Lessee or otherwise, other than on a merely transient basis (and shall include, without limitation, a Resident).

1.36 "Owner" means the Person or Persons who individually or collectively own fee title to a Lot (as evidenced by a Recorded instrument), provided that: (a) the Declarant (and not the fee title holder) shall be deemed to be the "Owner" of each Lot with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of the Declarant or a Declarant Affiliate; and (b) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to Chapter 6.1 of Title 33 of the Arizona Revised Statutes, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot. Where reference is made in this Declaration to one or more Lots "owned by" a Person, such phrase shall be deemed to refer to Lot(s) of which that Person is the Owner, as determined pursuant to this Section.

1.37 "Period of Declarant Control" means the period commencing on the date of the Recording of this Declaration and ending on the earlier of: (a) December 31, 2016; or (b) the date the Declarant Records a written instrument terminating the Period of Declarant Control.

1.38 "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.39 "Plat" means the plat Recorded in Book _____, at page _____, together with all amendments, supplements and corrections to such plat.

1.40 "Project" or "Property" means the real property described on Exhibit A, together with all Improvements located thereon.

1.41 "Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and the Design Review Rules.

1.42 "Purchaser" means any Person, other than the Declarant, who by any means of transfer becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot, is expressly assigned any or all of the Declarant's rights as the Declarant under this Declaration.

1.43 "Record," "Recording," "Recorded" and "Recordation" means placing or having placed an instrument of public record in the official records of Pima County, Arizona.

1.44 "Resident" means each individual who resides in any Residential Unit.

1.45 "Residential Unit" means any building, designed and intended for separate, independent use and occupancy as a residence.

1.46 "Special Assessment" means any Assessment levied pursuant to Section 6.5.

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

ARTICLE 2

PLAN OF DEVELOPMENT

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

2.2 Annexation of Additional Property.

2.2.1 At any time on or before December 31, 2046, the Declarant, during the Period of Declarant Control, and thereafter the Association, shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person (other than the Person who owns the property to be annexed, if other than the Declarant). The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording a written instrument (which may be, but shall not be required to be, a Tract Declaration) setting forth the legal description of the Additional Property being annexed and stating that such portion of the Additional Property is annexed and subjected to the Declaration.

2.2.2 The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. Property annexed by the Declarant or the Association pursuant to this Section 2.3 need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property. The Declarant makes no assurances as to which, if any, part of the Additional Property will be annexed.

2.3 Disclaimer of Representations. The Declarant makes no representations or warranties whatsoever that: (a) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (b) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (c) any property not now subject to this Declaration will be subjected to the provisions hereof; or (d) the use of any property subject to this Declaration will not be changed in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen representing the

Declarant or any Developer shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration.

2.4 Controlled Access Gates and Devices. Entry gates and access control devices (manned or unmanned) or similar facilities may be constructed within or adjacent to the Project. Each Owner and Occupant, and their families, guests and invitees, acknowledge that any such entry gates and access control devices (manned or unmanned) or similar facilities may restrict or delay entry into, or access within, the Project by police, fire department, ambulances and other emergency vehicles or personnel. Each Owner and Occupant and their families, guests and invitees agree to assume the risk that any such entry gates and access control devices (manned or unmanned) or similar facilities will restrict or delay entry into, or access within, the Project by police, fire department, ambulances or other emergency vehicles or personnel. Neither the Declarant, any Declarant Affiliate nor the Association, nor any director, officer, agent or employee of the Declarant, any Declarant Affiliate or the Association shall be liable to any Owner or Occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of any such entry gates or access control devices (manned or unmanned) or similar facilities.

2.5 Security.

2.5.1 The Association may maintain, provide, contract for or support certain services of a security-related nature. Initially, it is anticipated that those services may consist primarily, or exclusively, of operation of a gate at the entrance to the Project to monitor vehicles entering through such gate. However, any such services may be expanded, suspended, reduced or otherwise modified from time to time by the Board as it deems appropriate without the consent of, claim by, or liability to any Owners or Residents.

2.5.2 Neither the Association, the Board, the Declarant nor any manager hired by the Association shall in any way be deemed or held to be insurers or guarantors of the security of any person or property within the Project, nor be held liable in any way for any loss, damage or physical injury to persons or property which results, or is claimed to result, directly or indirectly from any failure, or claimed failure, to provide adequate security or ineffectiveness, or claimed ineffectiveness, of any security services or measures undertaken.

2.5.3 Neither the Association, the Board, the Declarant nor any manager hired by the Association (nor the Design Review Panel), nor any agent, employee or representative of any of them, represents or warrants that any entry gate, patrol, fire protection system, burglar alarm system or other security system or service (whether installed, provided, approved or operated by any of them) may not be compromised or circumvented; nor that any entry gate, patrol, fire protection system, burglar alarm system or other security system or service will prevent loss, damage or injury by burglary, theft, hold-up, assault or otherwise; nor that any entry gate, patrol, fire protection system, burglar alarm system or other security system or service will in all cases provide the detection or protection for which it is designed or intended.

2.5.4 Neither the Association, the Board, the Declarant nor any manager hired by the Association, nor any agent, employee or representative of any of them, shall have any liability to any Owner, Resident or other Person relating to any Person or Persons granted or denied admission to the Project at any entry gate operated by or for the Association.

2.5.5 All present and future Owners of any Lot or any portion of or interest in any Lot, and all present and future Occupants of any Lot or any portion of or interest in any Lot, are advised that, notwithstanding anything to the contrary, any entry gate, controlled access device or similar facility currently situated, or planned for construction, or hereafter constructed, across any street or roadway: (a) shown or depicted on any site plan, site map, conceptual plan, development plan or other drawing, diagram or map, however denominated, (b) contained, stated or depicted in any contract, recorded document, advertising material, promotional material, brochure or other document of any kind or type, or (c) contained or stated in any representations, promises or statements of any kind whatsoever, oral or written, by or attributed to any salesman, broker, Owner or Developer, or any officer, director, agent or representative of the Association, or any member of any committee of the Association (including, without limitation, the Design Review Panel), or any officer, director, employee, agent or representative of Declarant or any Declarant Affiliate, or any other Person (i) may be removed at some future date or dates, (ii) may be modified (including, without limitation, to change the same from a manned facility to an unmanned facility, or vice versa), in all such cases without any notice or liability to or consent of any Owners or Occupants of the Property or any portion thereof or interest in the Property.

ARTICLE 3

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

3.1 Land Uses. The purposes for which property within the Project may be used shall be: (a) "single family detached" residential use; (b) recreational use; (c) Common Area; and (d) Natural Open Space.

3.2 Architectural Control

3.2.1 All Improvements constructed within the Project shall be of new construction, and no buildings or other structures shall be removed from other locations to the Project (except for temporary construction and sales trailers or similar facilities approved in advance by the Design Review Panel).

3.2.2 No devegetation, excavation, grading, planting or revegetation work shall be performed within the Project without the prior written approval of the Design Review Panel.

3.2.3 No Improvement (including, without limitation, Landscaping) shall be constructed or installed within the Project without the prior written approval of the Design Review Panel.

3.2.4 Each Lot shall be divided for development purposes into two areas: (i) The area within which Improvements may be constructed (the "Building Envelope"); and, (ii) the remaining portion of the Lot which shall remain Natural Open Space. All Improvements which are constructed on a Lot shall be designed to be and shall be constructed within the Building Envelope. The proposed

Building Envelope for a Lot shall be identified in the plans submitted to the Design Review Panel. In reviewing the proposed Building Envelope as part of such plans, the Design Review Panel shall consider the natural features and topography of the Lot, views and the relationship of the Lot to adjacent Lots. Modifications to the approved Building Envelope may only be made by the Design Review Panel upon application by the Owner. The Association may enforce the restriction on development or disturbance of the Natural Open Space, including as provided in Section 3.2.13. Prior to clearing or grading, the Building Envelope shall be clearly staked and fenced and said fence shall remain standing through final inspection approval by the Design Review Panel. The Building Envelope fence shall be brought out to the street and constructed of steel posts and two-strand smooth wire so that compliance with this Section can be monitored.

3.2.5 No addition, alteration, repair, change or other work which in any way alters the exterior appearance (including but without limitation, the exterior color scheme) of any property within the Project, or any Improvements located thereon, shall be made or done without the prior written approval of the Design Review Panel, nor shall any Lot be split, divided or further subdivided in any manner without the prior written approval of the Design Review Panel.

3.2.6 Any Owner or other Person desiring approval of the Design Review Panel for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his, her or its Lot or other portion of the Project, or any Improvements located thereon, shall submit to the Design Review Panel a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change, replacement or other work which such Owner or other Person desires to perform. Any Owner or other Person requesting the approval of the Design Review Panel shall also submit to the Design Review Panel any additional information, plans and specifications that the Design Review Panel may reasonably request. The Design Review Panel shall: (a) provide the applicant with written notice stating the date when the application, together with all supporting information, plans and specifications required by the Design Review Rules or reasonably requested by the Design Review Panel, have been submitted to it (the "Application Completion Date"); and (b) respond to such application within thirty (30) days after the Application Completion Date.

3.2.7 The approval by the Design Review Panel of any construction, installation, addition, alteration, repair, change, replacement or other work pursuant to this Section shall not be deemed a waiver of the Design Review Panel's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, replacement or other work subsequently submitted for approval.

3.2.8 Upon receipt of approval from the Design Review Panel for any construction, installation, addition, alteration, repair, change, replacement or other work, the Owner or other Person who has requested such approval shall proceed to perform, construct or make the installation, addition, alteration, repair, change or other work approved by the Design Review Panel as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Panel.

3.2.9 Any change, deletion or addition to the plans and specifications approved by the Design Review Panel must be approved in writing by the Design Review Panel.

3.2.10 The Design Review Panel shall have the right to charge a reasonable fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change, replacement or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Design Review Panel. Such fee, if established and charged by the Design Review Panel, shall be set at such reasonable level as the Design Review Panel may estimate will be necessary to defray the reasonable costs and expenses of the Design Review Panel in reviewing and evaluating any such request or application, and may include, if the Design Review Panel deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the Design Review Panel by an architect or engineer. The Design Review Panel may, in its reasonable discretion, charge different fees for different Lots or Parcels to reflect differences in the costs and expenses the Design Review Panel believes it may incur due to unique or special characteristics of the proposed Improvements or other work or for additional reviews by third party engineers or other experts.

3.2.11 The provisions of this Section do not apply to, and approval of the Design Review Panel shall not be required for, any construction, installation, addition, alteration, repair, change, replacement or other work by, or on behalf of, the Declarant.

3.2.12 The approval required of the Design Review Panel pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, or under any other Recorded instrument. The Design Review Panel may condition its approval of any application, plans or other items submitted to it on delivery to the Design Review Panel of evidence satisfactory to the Design Review Panel that the Owner or other Person seeking its approval has also made appropriate applications for (and prior to commencing work shall have obtained) any and all such other approvals or permits. The Design Review Panel shall cooperate reasonably with any other approving authorities or entities, provided, however, that the Design Review Panel shall not be bound by any approvals, permits or other decisions of any other such approving authority or entity.

3.2.13 The Design Review Panel, acting on behalf of and at the expense of the Association, shall have the right, power and authority to order that any Improvement or other work which the Design Review Panel determines was or is commenced, undertaken, performed or completed, or is being performed, in violation of this Section 3.2 be immediately stopped, halted and/or removed (as directed at the sole and absolute discretion of the Design Review Panel) by the Owner of the applicable Lot or other portion of the Project, and to take such actions as the Design Review Panel deems necessary to cause the same to be stopped, halted and/or removed (including, without limitation, commencement of legal action, whether for injunctive relief or otherwise, and/or entry upon the applicable property for purposes of removing or correcting the violation); all expenses incurred by the Association and/or the Design Review Panel in taking such actions (including, without limitation, court costs and attorneys' fees) shall be the responsibility of the applicable Owner, shall be paid by such Owner to the Association and/or the Design Review Panel immediately upon demand (with interest at the rate established by the Board for delinquent Assessments pursuant to Section 6.8.1 from the date incurred until fully paid), and shall be secured by the Assessment Lien against all property in the Project owned by such Owner.

3.3 Occupancy of Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent.

3.4 Maintenance of Landscaping. No Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Natural Open Space (including, without limitation, any plants, vegetation, rocks or soil thereon). Each Owner of a Lot shall properly maintain and keep neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material all Landscaping located on any of the following areas which are not within Natural Open Space: (a) his, her or its Lot; (b) any public right-of-way or easement area which abuts or adjoins the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike-path or similar area (unless otherwise directed by the Board); and (c) any non-street public right-of-way or easement area adjacent to his Lot (unless otherwise directed by the Board); provided, however, that such Owner shall not be responsible for maintenance of any area over which: (i) the Association assumes the responsibility in writing; or (ii) the County or any other municipality or other governmental agency or entity having jurisdiction over such property assumes responsibility, for so long as the County or such other municipality or other governmental agency or entity assumes or has responsibility. For purposes of this Section 3.4, proper maintenance of Landscaping shall include, without limitation, removal and replacement of dead Landscaping from areas other than Natural Open Space, subject to the Design Review Rules or as may otherwise be directed by the Design Review Panel.

3.5 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property within the Project, and no odors, loud noises or loud music shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon or adjacent to any Lot or other property within the Project so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property within the Project shall not be considered a nuisance or otherwise prohibited by this Declaration, but must comply with the Design Review Rules and any other requirements of the Design Review Panel. However, notwithstanding anything in this Section to the contrary, no Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Natural Open Space (except as contemplated by Subsection 3.2.4).

3.6 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot or other property within the Project, which shall induce, breed or harbor infectious diseases or noxious insects. However, notwithstanding anything in this Section to the contrary, no Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Natural Open Space (except as contemplated by Subsection 3.2.4).

3.7 Repair of Building. No Residential Unit, building, structure or other Improvement on any Lot shall be permitted to fall into disrepair and each such Residential Unit, building, structure and other Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Residential Unit, building, structure or other Improvement is

damaged or destroyed, then, subject to the approvals required by Section 3.2, such Residential Unit, building, structure or other Improvement shall be immediately repaired or rebuilt or shall be demolished.

3.8 Mineral Exploration. No Lot or other property within the Project shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by the Declarant.

3.9 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or other property within the Project except in sanitary, covered containers of a type, size and style which are approved by the Design Review Panel. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from Lots and other property within the Project and shall not be allowed to accumulate thereon. No outdoor incinerators shall be maintained on any Lot or other property within the Project. However, notwithstanding anything in this Section to the contrary, no Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Natural Open Space (except as contemplated by Subsection 3.2.4).

3.10 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property within the Project unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Panel. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures for emergency purposes or incident to the construction of buildings or structures approved by the Design Review Panel. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel or other equipment on the outside front wall of a residence or other building facing the street running directly in front of such residence.

3.11 Overhead Encroachments. No tree, shrub or planting of any kind shall be allowed to overhang or otherwise to encroach upon any street or pedestrian way from ground level to a height of eight (8) feet without the prior approval of the Design Review Panel.

3.12 Health, Safety and Welfare. In the event additional uses, activities or facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Occupants, the Board may make rules restricting or regulating their presence in the Project as part of the Association Rules or may direct the Design Review Panel to make rules governing their presence within the Project as part of the Design Review Rules. However, notwithstanding anything in this Section to the contrary, no Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Natural Open Space (except as contemplated by Subsection 3.2.4).

3.13 Spec Homes. Any provisions of this Declaration which prohibit non-residential use of Lots shall not prohibit the construction and maintenance of spec homes so long as the construction, operation and maintenance of such spec homes otherwise comply with all of the provisions of this Declaration and the Design Review Rules.

3.14 Incidental Uses. The Design Review Panel may approve uses which are incidental to the full enjoyment of the Lots by its Owners and Occupants. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Design Review Panel may wish to impose, in its sole discretion, for the benefit of the Project as a whole.

3.15 Residential Use and Trades or Businesses. All Lots and Residential Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident may conduct a business activity in a Residential Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements; (c) the business activity does not involve the door-to-door solicitation of Owners or other Residents in the Project; (d) the use of the Residential Unit for trade or business shall in no way destroy or be incompatible or inconsistent with the residential character of the Residential Unit or the surrounding neighborhood, or threaten the security or safety of other Owners or Residents; (e) the trade or business shall be conducted only inside the Residential Unit or inside an approved accessory building or garage, and shall not involve the viewing, purchase or taking delivery of goods or merchandise at, to, from or in any Residential Unit; (f) the Residential Unit used for trade or business shall not be used as a storage facility for a business conducted elsewhere; (g) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood; (h) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (i) a trade or business shall not utilize large vehicles not customary to a residential use. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. None of the following shall be considered a trade or business within the meaning of this Section: (x) leasing of a Residential Unit by the Owner thereof; or (y) construction, remodeling or repair of a Residential Unit or other Improvements on a Lot by or for the Owner thereof.

3.16 Animals. No animal, livestock, horses, mules, donkeys, poultry or fowl of any kind, other than a reasonable number of house pets, shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any pet shall be Visible From Neighboring Property. Notwithstanding the foregoing, no pets may be kept on or in any Lot which, in the opinion of the Board, result in an annoyance to other Owners or Occupants in the vicinity. All pets shall be leashed when not on property owned by the pet's owner or on which the pet's owner is a Resident or guest, and persons walking any pet shall promptly and properly remove and dispose of the pet's waste.

3.17 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or other Improvements; and (b) that which Declarant or the Association may permit or require for the development, operation and maintenance of the Project.

3.18 Signs. No signs whatsoever (including, but not limited to commercial, political, "for sale", "for rent" and similar signs) shall be erected or maintained on any Lot or Parcel except:

3.18.1 Signs required by legal proceedings.

3.18.2 Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Design Review Panel.

3.18.3 Signs of Developers approved from time to time by the Design Review Panel as to number, size, color, design, message content, location and type.

3.18.4 Such construction job identification signs, business identification signs and subdivision identification signs which are in conformance with the requirements of the County or any municipality having jurisdiction over the property and which have been approved in writing by the Design Review Panel as to number, size, color, design, message content and location.

3.19 Required Approvals for Further Property Restrictions.

3.19.1 No Lot, or portion thereof, shall be further subdivided, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Design Review Panel.

3.19.2 No further covenants, conditions, restrictions, or easements (which term, for purposes of this Declaration, shall be deemed to include, without limitation, declaration of condominium) shall be Recorded against any Lot, without the prior written approval of the Design Review Panel.

3.19.3 No applications for rezoning, variances or use permits, or for waivers of or modifications to existing variances, use permits, zoning stipulations or similar restrictions, shall be filed with any governmental authority or agency without the prior written approval of the Design Review Panel, and then only if such proposed zoning, variance or use, or waiver or modification, is in compliance with this Declaration and applicable approved development plans for the Project.

3.19.4 No subdivision plat, easement, declaration of further covenants, conditions, restrictions or easements or other instrument which is to be Recorded and which is required by this Section 3.19 to be approved by the Design Review Panel shall be effective unless the required approval is evidenced on such instrument by the signature of an authorized representative of the Design Review Panel.

3.19.5 No site plan, subdivision plat, condominium declaration, Neighborhood Declaration or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be submitted to the County or any other governmental authority or agency unless the same has first been approved in writing by the Design Review Panel as provided in this Section 3.19; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Design Review Panel hereunder (whether requested by the County or otherwise) unless such changes or modifications have first been approved by the Design Review Panel in writing.

3.19.6 Notwithstanding the foregoing, the Declarant shall not be required to seek or obtain any of the approvals or consents otherwise required under this Section 3.19 as to any Lot (or any portion thereof) of which Declarant is the Owner.

3.20 Vehicles. Except as otherwise provided in this Section, all Vehicles (as defined below) must be parked, kept, maintained, stored, constructed, reconstructed or repaired only within a fully-enclosed garage approved by the Design Review Panel pursuant to Section 3.2. For purposes of this Section, the term "Vehicles" includes cars, trucks and vans of all sizes, motorcycles, motorbikes, mopeds, mini-bikes, motor scooters, all-terrain vehicles, off-road vehicles, motorhomes, recreational vehicles, trailers, travel trailers, tent trailers, camper shells, detached campers, boats, boat trailers, mobile homes, or other similar machinery or equipment, whether motorized or not, whether wheeled or not and whether or not in operating condition. Notwithstanding the foregoing: (a) automobiles, minivans and other primarily passenger Vehicles of guests or visitors of Owners or Occupants of a Lot may be parked outside on a driveway on such Lot (and, subject to such rules and regulations as may be adopted by the Board, on adjacent streets or roadways) on a short-term basis during daylight and evening hours, and, on an occasional basis only, may be parked outside on a driveway on such Lot overnight (provided that the Board may adopt rules or regulations relating to the number or frequency of guest or visitor Vehicle parking, if it determines, in its discretion, that such rules or regulations are necessary); (b) service, repair or delivery vehicles may be parked on a Lot, but only for the period reasonably required to effect the needed service, repair or delivery; and (c) a temporary construction trailer may be placed and maintained on a Lot in connection with construction of Improvements on that Lot, but only if that temporary construction trailer, its location on the Lot and the period during which it will be permitted to remain on the Lot are approved in writing by the Design Review Panel. Except for emergency repairs, no Vehicle shall be repaired, constructed or reconstructed on the Property except within a fully enclosed garage. Except as expressly provided above, no Vehicle shall be parked on any roadway or street within or adjacent to the Property. The Design Review Panel may adopt, and from time to time amend, rules governing parking within the Property of Vehicles used in connection with the construction or reconstruction of Improvements on any Lot (including, without limitation, Vehicles used by construction workers for transportation to and from the job site); the provisions of this Section 3.20 shall not be deemed to prohibit the Design Review Panel from adopting or amending such rules, nor from adopting such rules which may, under such circumstances as the Design Review Panel deems appropriate in its discretion, waive or modify the provisions of this Section 3.20 for limited period of time during periods of construction or reconstruction of Improvements on Lots within the Property.

3.21 Towing of Vehicles. The Board has the right, without notice, to have any Vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the Vehicle. Any expense incurred

by the Association in connection with the towing of any Vehicle must be paid to the Association upon demand by the owner of the Vehicle. If the Vehicle is owned by an Owner or Occupant, any amounts payable to the Association will be secured by the Assessment Lien against that Owner's or Occupant's Lot, and the Association may enforce collection of those amounts in the same manner provided for in this Declaration for the collection of Assessments.

3.22 Variances. The Design Review Panel may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Design Review Panel determines in its discretion that the activity permitted under the variance will not have any substantial adverse effect on Owners and Occupants and is consistent with the high quality of life and design excellence intended for residents of the Project.

3.23 Change of Use of Common Area. Upon: (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners; and (b) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are voting in person or by absentee ballot at a meeting duly called for such purpose and who are entitled to use such Common Area under the terms of this Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be consistent with any zoning regulations restricting or limiting the use of the Common Area. This Section 3.23 shall not apply to, or be deemed to limit in any way, the right and power of the Association pursuant to Subsection 4.1.1(a) to grant easements over, under or through portions of the Common Area, or to dedicate portions of the Common Area, to public, quasi-public or private utility companies, municipalities or other governmental agencies or entities, in connection with or at the time of development of property within or adjacent to the Project, where required or requested by any municipality or other governmental agency or entity, or any public, quasi-public or private utility company.

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

3.25 Garages. The interior of all garages shall be maintained in a neat, clean and sightly condition. Garages shall be used only for parking vehicles and storage, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons.

3.26 Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building.

3.27 Solar Collecting Panels or Devices. The Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential

use. At the same time, the Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Design Review Panel, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property so long as such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Design Review Panel may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed from any street or from any other property (whether within or outside the Property). Notwithstanding any other provision of this Declaration to the contrary, the Declarant (during the Period of Declarant Control) or the Board (after the expiration or termination of the Period of Declarant Control) shall have the right, without the consent or approval of any Owner or other Person, to amend this Section (which amendment may, without limitation, impose additional or different restrictions on solar collecting panels and devices) as the Declarant or the Board (as applicable) deems appropriate in the event that, after the date this Declaration is Recorded, Section 33-439 of the Arizona Revised Statutes (or any successor thereto) is amended, repealed or replaced.

3.28 Tanks. No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot unless such tanks are buried underground. Nothing herein shall be deemed to prohibit use or storage upon any Lot of an aboveground propane or similar fuel tank with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace or a spa or "hot tub," so long as any such tank either: (a) has a capacity of ten (10) gallons or less; or (b) is appropriately stored, used and/or screened, in accordance with the Design Review Rules or as otherwise approved by the Design Review Panel, so as not to be Visible From Neighboring Property.

3.29 Exterior Lighting. Exterior lighting shall be permitted on a Lot so long as: (a) the source of such lighting is not Visible From Neighboring Property; (b) such lighting is limited to that which is reasonably necessary for the safety and convenience of the Occupants of such Lot; and (c) such lighting conforms to such other requirements as may be imposed by the Design Review Panel. Notwithstanding the foregoing, but subject to reasonable regulation by the Design Review Panel, Owners or Occupants may display temporary holiday lighting during the period from November 1, through the immediately following January 31, and during the period beginning one (1) week before and ending one (1) week after any nationally recognized holiday not falling within such November 1 through January 31 period.

3.30 Antennas, Poles, Towers and Dishes. Except as and to the extent required by applicable law, no television, radio, shortwave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Lot or other part of the Property unless such antenna, pole, tower or dish is fully and attractively screened or concealed so as not to be Visible From Neighboring Property, which means of screening or concealment shall be subject to the regulation and prior approval of the Design Review Panel. Notwithstanding the foregoing, the Design Review Panel may adopt a rule or regulation permitting an Owner or Occupant to install and maintain a flagpole upon the Owner's or Occupant's Lot, provided that the location and size of such flagpole (and the number and size of any flag(s) mounted thereon) may be regulated by the Design Review Panel and may, if so provided in such rule or regulation, be made subject to the prior approval thereof by the Design Review

Panel. Poles to which basketball backboards, goals and related equipment are affixed shall be governed by Section 3.31.

3.31 Basketball Goals or Play Structures. No basketball goal, backboard or similar structure or device, and no swingsets or other play structures, shall be placed or constructed on any Lot without the prior written approval of the Design Review Panel (including, without limitation, approval as to appearance and location).

3.32 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by the Declarant, any Declarant Affiliate, any agents or contractors thereof, or any Developer authorized in writing by Declarant to do so, during the period of development, construction and sales on the Property, of Improvements, landscaping or signs deemed necessary or convenient by the Declarant, in its sole discretion, to the development or sale of property within the Property.

ARTICLE 4

EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Section 4.4, each Owner, and each Occupant of such Owner's Lot, shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, which right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to the provisions of this Declaration including, without limitation, the following:

(a) Notwithstanding any provision of this Declaration to the contrary, the Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any part of the Property), to mortgage, encumber or transfer Common Area, or portions thereof, under circumstances where the Board deems it appropriate and in the interests of the Association to do so, to dedicate portions of the Common Area to the public, or to grant easements over, under or through portions of the Common Area to the public, to any municipal or other governmental agency or entity, or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by the County or any municipal or other governmental agency or entity having jurisdiction, or by a public, quasi-public or private utility company, in connection with or at the time of the development of portions of the Property.

(b) The Association shall have the right to regulate the use of the Common Area through the Association Rules (which may include, without limitation, the adoption and implementation of a reservation system for such portions of the Common Area, or Improvements or amenities thereon, as the Board deems appropriate) and to prohibit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or other Occupants.

(c) The Declarant and the Association shall each have the right to grant easements or licenses to Developers or other Persons for the construction of Improvements on the Common Area, and the Declarant and the Association shall each have the right to grant ingress and egress easements over the streets and roads in the Project to Persons who are not Members of the Association.

(d) The Declarant and the Association shall each have the right to convey certain portions of the Common Area to Owners of adjoining Lots in connection with the correction or adjustment of any boundary between Common Area and any one or more adjoining Lots.

(e) The Association shall have the right to suspend the rights of any Owner or Occupant to use and enjoy recreational facilities on the Common Area: (1) for any period during which an Assessment remains delinquent; (2) for a period not to exceed 60 days for any infraction of the Project Documents; or (3) for successive 60-day periods if any such infraction is not corrected during any preceding suspension period.

4.1.2 If a Lot is leased or rented by its Owner, the Occupants of such Lot shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease (except to use private streets which are part of the Common Area for access to inspect or otherwise visit such Owner's Lot).

4.1.3 The Board shall have the right to limit the number of guests and invitees who may use any recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area, Lots and other property for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment on the Common Area, Lots and other property but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Area, Lots and other property except as initially designed, approved and/or constructed by the Declarant or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot). If any utility company requests that a more specific easement be granted in its favor in substitution for the blanket easement hereby established with respect to the Common Area, the Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate.

4.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across paths, walks and lanes that from time to time may exist upon the Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for

the benefit of the Owners and Occupants and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Common Area and all private streets, private roadways, private driveways and private parking areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel.

4.4 Declarant's Use and Easements.

4.4.1 The Declarant shall have the right and an easement (which, in its discretion, it may delegate to and/or share with one or more Developers, upon and subject to such terms and conditions as the Declarant may deem appropriate) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots in the Project. The Declarant reserves the right (which, in its discretion, it may delegate to and/or share with one or more Developers, upon and subject to such terms and conditions as the Declarant may deem appropriate) to place models, management offices and sales and leasing offices on any Lots or other property owned by the Declarant (or by such Developer(s), as applicable) and on any portion of the Common Area in such number, of such size and in such locations as the Declarant deems appropriate.

4.4.2 So long as the Declarant is marketing Lots, the Declarant shall have the right to restrict the use of the parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

4.4.3 The Declarant shall have the right and an easement on and over the Common Area to construct all Improvements the Declarant may deem necessary and to use the Common Area and any Lots and other property owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project and property adjacent to the Project.

4.4.4 The Declarant shall have the right and an easement upon, over and through the Common Area as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by the Declarant in this Declaration.

4.4.5 The Declarant shall have the right to grant and establish non-exclusive easements for pedestrian and vehicular access over and across any existing or future streets or roadways in or through the Project to owners and residents of any property or properties adjacent to any part of the Project (and their respective guests, occupants, tenants, visitors, employees, contractors and invitees).

4.4.6 The Declarant shall have the right to grant and establish non-exclusive easements for pedestrian and horse access over and across wash corridors (and any other areas required by the County) within or through the Property for purposes of establishing, extending or enhancing local or regional trail systems.

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

4.5.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

4.5.2 For inspection, maintenance, repair and replacement of portions of the Common Area accessible only from such Lots;

4.5.3 For correction of emergency conditions on one or more Lots or on portions of the Common Area accessible only from such Lots;

4.5.4 For the purpose of enabling the Association, the Board, the Design Review Panel or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Project Documents;

4.5.5 For inspection during reasonable hours of the Lots in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Project Documents.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

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

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area; the Board shall determine the compensation to be paid to any such manager. During the Period of Declarant Control, the members of the Board shall be appointed by, and serve at the pleasure of, the Declarant; after the Period of Declarant Control, the members of the Board shall be elected by the Members in accordance with the Articles and Bylaws, for the terms specified therein. During the Period of Declarant Control, the Declarant may, at its option and in its sole discretion, allow the Members to elect one or more members of the Board for such period and on such other terms as the Declarant may

impose, but in such case, notwithstanding any other provision of the Project Documents to the contrary, during the Period of Declarant Control, the Declarant may nevertheless remove as a member of the Board any individual so elected by the Members, without the consent or approval of the members, the individual so removed or any other member of the Board.

5.3 Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Common Area including, but not limited to, any recreational facilities situated upon the Common Area; (b) traffic and parking restrictions including speed limits on private streets within the Project; (c) minimum standards for any maintenance of Common Areas, Lots and Parcels within the Project; or (d) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

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

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

5.6 Membership in the Association. Every Owner of a Lot which is Assessable Property shall be a Member of the Association, and the Declarant shall be a Member of the Association so long as either: (a) the Declarant owns any part of the Project; or (b) the Period of Declarant Control has not expired or terminated as provided in Article 1.

5.7 Votes in the Association.

5.7.1 Each Owner other than the Declarant shall be entitled to one (1) vote for each Lot owned by such Owner.

5.7.2 Until the expiration or termination of the Period of Declarant Control, the Declarant shall be entitled to the number of votes equal to twenty three (23) minus the total number of outstanding votes held at the time by Owners other than the Declarant. After the expiration or termination of the Period of Declarant Control, the Declarant shall have one (1) vote for each Lot owned by the Declarant.

5.7.3 Until the expiration or termination of the Period of Declarant Control: (a) the Association shall be deemed to have two classes of Members, Class A and Class B; (b) the Declarant shall be the Class B Member, and all votes held by the Declarant shall be Class B votes; (c) all Owners other than Declarant shall be Class A Members, and all votes held by such Owners shall be Class A votes. Following expiration or termination of the Period of Declarant Control, the Association shall be deemed to have a single class of Members and votes. Notwithstanding the foregoing, however, except as otherwise expressly provided in this Declaration or in any of the other Project Documents, any issue put to a vote at a duly called meeting of Members at which a quorum is present shall be decided by a simple majority of all votes represented in person or by valid absentee ballot at such meeting, regardless whether such votes are otherwise deemed to be Class A votes or Class B votes.

5.8 Voting Procedures. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded; the Board shall thereafter be given written notice of such change and provided satisfactory evidence thereof. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote or votes for a particular Lot, the vote or votes for that Lot shall be deemed void and shall not be counted.

5.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his, her or its purchase of a Lot. The Association may require the Purchaser of a Lot to pay to the Association a transfer fee in an amount to be set by the Board, and the transfer fee shall be secured by the Assessment Lien.

5.10 Design Review Panel.

5.10.1 The Association shall have a Design Review Panel to perform the functions assigned to it as set forth in this Declaration. Until expiration or termination of the Period of Declarant Control, the Design Review Panel shall consist of at least three (3) regular members and at least one (1) alternate member, each of whom shall be appointed by, and serve at the pleasure of, the Declarant. After expiration or termination of the Period of Declarant Control, the Design Review Panel shall consist of such number of regular and alternate members as the Board may deem appropriate from time to time (but in no event less than three (3) nor more than seven (7) regular members, nor less than one (1) nor more than three (3) alternate members), each of whom shall be appointed by, and serve at the pleasure of, the Board. Notwithstanding the foregoing, the Declarant may at any time prior to expiration

or termination of the Period of Declarant Control voluntarily surrender in a Recorded instrument its right, as the Declarant, to appoint and remove some or all of the members of the Design Review Panel pursuant to this Subsection 5.10.1, and in that event the Declarant may require, for so long as the Declarant owns any Lot or other property within the Project, that specified actions of the Design Review Panel, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective, and may further provide in such Recorded instrument for the resumption by Declarant of its right to appoint all members of the Design Review Panel, on such terms and conditions as Declarant may provide in such Recorded instrument.

5.10.2 The Design Review Panel shall promulgate architectural design guidelines and standards (including, but not limited to, color palettes and plant materials) to be used in rendering its decisions. The decision of the Design Review Panel shall be final on all matters submitted to it pursuant to this Declaration. As provided in Subsection 3.2.10, the Design Review Panel may establish a reasonable fee to defer the costs of considering any requests for approvals submitted to the Design Review Panel, which fee shall be paid at the time the request for approval is submitted. The Design Review Panel may vary such fee from Lot to Lot if, in the reasonable discretion of the Design Review Panel, differences in the proposed Improvements or other features relating to the respective applications for approval appear likely to lead to differences in the costs the Design Review Panel is likely to incur in reviewing the respective applications. In the event of any conflict between this Declaration and any design guidelines adopted by the Design Review Panel, this Declaration shall control.

5.10.3 No member of the Design Review Panel shall be personally liable to any Owner, the Association or any other Person for any mistake of judgment or for any other acts or omissions of any nature whatsoever (including, without limitation, any mistake in judgment, negligence, malfeasance or nonfeasance) except for willful or intentional misconduct or fraud. The Association shall indemnify and hold harmless the members of the Design Review Panel, and their respective heirs and legal representatives, against all contractual and other liabilities to others arising out of: (a) contracts made by the Design Review Panel, within the scope of and in the course of performing its duties hereunder; (b) acts or omissions of such members of the Design Review Panel; or (c) their status as members of the Design Review Panel; provided, however, that such indemnification shall not be applicable where any such contract, act or omission constitutes willful or intentional misconduct or fraud. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, reasonable attorneys' fees and disbursements, amounts of judgments paid and settlement amounts) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such member of the Design Review Panel may be involved by virtue of being or having been a member of the Design Review Panel; provided, however, that such indemnity shall not be operative with respect to: (i) any matter as to which a member of the Design Review Panel shall have finally been adjudged in such action, suit or proceeding to be liable for willful or intentional misconduct or fraud in the performance of his or her duties as such member of the Design Review Panel; or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by the Board, there is no reasonable ground for such member of the Design Review Panel being adjudged liable for willful or intentional misconduct or fraud in the performance of his or her duties as a member of the Design Review Panel.

5.10.4 Subject to the provisions of Subsection 5.10.3, neither the Association, the Board, nor the Design Review Panel, nor any of the members of any of them, shall be liable in damages

or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications. Further, the design and construction of any Improvement shall be the sole responsibility of the Owner and any recommendation, requirement or condition with respect to any plans or specifications or the means or method of construction made by the Design Review Panel or any member thereof shall not alter the Owner's responsibility for the safe and proper design and construction of said Improvement, nor shall it give rise to any claim by anyone against the Association, the Board or the Design Review Panel or any member of any of them for any defect in design or construction of any Improvement.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot or Parcel, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title), but the lien created by this Declaration against the applicable Lot shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges) until the same are fully paid.

6.2 Annual Assessment.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each Assessment Period beginning with the fiscal year ending December 31, 2007, shall assess an Annual Assessment against each Lot which is Assessable Property.

6.2.2 Beginning with the 2007 Assessment Period, the Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each

Assessment Period, but the failure to give prior notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board (provided, however, that the total Annual Assessment for such Assessment Period shall not exceed the maximum amount determined pursuant to Section 6.3 nor any maximum imposed by applicable law).

6.3 Rate of Assessment.

6.3.1 The Annual Assessment against each Lot for the 2007 Assessment Period shall be set by the Board at least thirty (30) days prior to the beginning of the Assessment Period; and (b) for each subsequent fiscal year, the Annual Assessment against each Lot shall be the amount equal to the total budget of the Association for the applicable Assessment Period divided by the total number of Lots in the Association (subject to Subsection 6.3.2 and 6.3.3 below).

6.3.2 Notwithstanding any provision of this Declaration to the contrary, beginning with the Assessment Period ending December 31, 2007, the Annual Assessment provided for herein shall not for any fiscal year of the Association exceed the Maximum Annual Assessment, as determined in accordance with this Subsection 6.3.2. For the fiscal year ending December 31, 2007, the Maximum Annual Assessment shall be as determined by the Board in accordance with Subsection 6.3.1. Thereafter, unless a greater increase is approved by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid absentee ballot at a meeting of Members duly called for such purpose, the Maximum Annual Assessment for any fiscal year (the "New Year") shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year (the "Prior Year") increased at a rate equal to the greater of: (i) the percentage increase in the CPI from the Base Month to the Index Month (as each of those terms is defined below); or (ii) ten percent (10%). Nothing herein shall obligate the Board to establish, in any fiscal year, a budget which results in Annual Assessments, as calculated pursuant to Subsection 6.3.1 above, to be in the full amount of the Maximum Annual Assessment for such fiscal year, and the election by the Board not to establish a budget which would result in the Annual Assessment, as calculated pursuant to Subsection 6.3.1 above, to be in the full amount of the Maximum Annual Assessment for any fiscal year shall not prevent the Board from establishing a budget in subsequent fiscal years such that the Annual Assessment for such subsequent fiscal year, as calculated pursuant to Subsection 6.3.1 above, is in the full amount of the Maximum Annual Assessment for such subsequent fiscal year (as determined in accordance with this Subsection 6.3.2). For purposes hereof: (x) the term "CPI" means the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, in the index most similar in composition to such index; (y) the term "Index Month" means the month of July immediately prior to the beginning of the New Year; and (z) the term "Base Month" means the month of July immediately prior to the beginning of the Prior Year; provided, however, that if the Board changes the Assessment Period pursuant to Section 6.6, the Board shall have the right to change the calendar month used for purposes of clauses (y) and (z) (so long as the same calendar month in successive years is used for both clauses).

6.3.3 Notwithstanding any other provision of this Declaration to the contrary, no Annual Assessment shall be levied against Lots owned by the Declarant or a Declarant Affiliate. During the Period of Declarant Control, the Declarant shall subsidize the Association for the amount by which (i) the cost of operating and administering the Association and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies exceeds (ii) the total amount of Assessments levied against Lots owned by Owners other than the Declarant or a Declarant Affiliate. The subsidy required of Declarant under this Subsection 6.3.3 may be in the form of cash or in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any subsidies made by Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed. Declarant shall make payments or contributions in respect of its subsidy obligations under this Subsection 6.3.3 at such times as the Board may reasonably request from time to time (but shall not be required to make such payments or contributions more often than monthly); at the end of each fiscal year of the Association, either: (1) Declarant shall pay or contribute to the Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by Declarant during such fiscal year, to satisfy in full Declarant's subsidy obligations under this Subsection 6.3.3 for such fiscal year; or (2) the Association shall pay to Declarant or credit against Declarant's subsidy obligation for the immediately following fiscal year, as Declarant may elect, the amount, if any, by which the total of all payments or contributions paid or made by Declarant during such fiscal year exceeded the total subsidy obligation of Declarant for such fiscal year under this Subsection 6.3.3.

6.3.4 Except as otherwise provided in this Section 6.3, Annual Assessments shall be assessed at a uniform rate among all Lots. If a Lot first becomes subject to assessment during an Assessment Period (by virtue of transfer of ownership thereof by Declarant or a Declarant Affiliate to another Owner), the Annual Assessment attributable to such Lot shall be prorated upon the basis of the number of days in the Assessment Period before and after such transfer.

6.3.5 Notwithstanding any provision of this Declaration to the contrary, increases from year to year in the Annual Assessment shall be subject to any limitations imposed by applicable Arizona law.

6.4 Special Assessments. The Association may levy against each Lot which is Assessable Property, in any Assessment Period, a Special Assessment in such amount and for such purpose or purposes as are approved by Members holding two-thirds (2/3) of the votes entitled to be cast, in person or by absentee ballot, at a meeting duly called for such purpose.

6.5 Assessment Period. The period for which the Annual Assessments are to be levied (the "Assessment Period") shall be the calendar year. The Board in its sole discretion from time to time may change the Assessment Period.

6.6 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected with such frequency as may be selected by the Board (but in no event more often than monthly nor less often than annually). Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of

making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.7 Effect of Nonpayment of Assessments; Remedies of the Association.

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

6.7.2 The Association shall have a lien on each Lot for all Assessments levied against the Lot and for all other fees and charges payable to the Association by the Owner of the Lot pursuant to this Declaration. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees and reasonable attorneys' fees.

6.7.3 The Assessment Lien shall have priority over all liens or claims except for (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental body; and (c) the lien of any First Mortgage.

6.7.4 The Association shall not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.7.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys fees and any other sums due to the Association in any manner allowed by law including, but not limited to: (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments; or (b) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.8 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating (in addition to any other statements required by applicable Arizona law): (a) that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

6.9 Purposes for Which Association's Funds May be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Occupants, maintenance of landscaping on Common Area and public right-of-way and drainage areas within the Project, construction, operation and maintenance of recreational and other facilities on Common Area, recreation, insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Association, employment of professional managers, and hiring professional consultants such as architects, engineers, attorneys and accountants.

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

6.11 Transfer Fee. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board to defray various administrative costs associated with transfer of ownership of a Lot, changing the Association's (and any association manager's) records and the like.

6.12 Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments. Notwithstanding any other provision hereof or of the Articles, Bylaws or Association Rules, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment, as required by Section 6.5 hereof; or (b) approving any increase in the Maximum Annual Assessment greater than that permitted by Subsection 6.3.2, shall be

sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in the Maximum Annual Assessment, a quorum shall consist of sixty percent (60%) of the votes in each class of Members (whether represented in person or by absentee ballot), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting. The requirements of this Section are in addition to, and not intended to be in substitution for, the provisions of any applicable Arizona law.

6.13 Reserve Fund Contribution.

6.13.1 Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a contribution (the "Reserve Fund Contribution"), in an amount determined by multiplying (a) the Reserve Fund Contribution Rate established pursuant to Subsection 6.14.6, by (b) the total sales price of that Lot. If the Purchaser acquires the Lot through an escrow with an escrow agent or similar person or entity, the Purchaser shall cause the Reserve Fund Contribution to be paid to the Association through such escrow immediately upon the closing of that escrow; otherwise, the Purchaser shall cause the Reserve Fund Contribution to be paid to the Association no later than two (2) business days after the date the deed or other instrument transferring title to the Purchaser is Recorded. However, no Reserve Fund Contribution shall be due, payable or collected in connection with any transfer or sale of a Lot where the seller or transferor is Declarant or, at Declarant's option, a Declarant Affiliate.

6.13.2 All amounts paid by Purchasers pursuant to this Section 6.14 shall be deposited and held, together with any and all interest earned thereon, in a separate bank account in the Association's name (the "Reserve Fund Account"). Funds in the Reserve Fund Account may be used for any purpose or purposes as the Board deems appropriate, including, without limitation, allocation to capital reserves, allocation to operating or working capital reserves, allocation to a reserve for contingencies, allocation to a reserve for repairs or replacements not covered (or not fully covered) by insurance and for construction, repair or maintenance of capital improvements.

6.13.3 Reserve Fund Contributions shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to any other provision of this Declaration.

6.13.4 Each Purchaser shall pay the Reserve Fund Contribution calculated in accordance with this Section 6.14, regardless whether, at the time the Purchaser acquires title to the applicable Lot, any Residential Unit (whether or not completed or commenced) is situated thereon. However, the Reserve Fund Contribution may, as further provided below, be different depending on whether, at the time the Purchaser acquires title to the Lot, there is a completed Residential Unit thereon.

6.13.5 The Reserve Fund Contribution payable in connection with the purchase of a Lot shall be secured by the Assessment Lien against that Lot, and shall be the personal obligation of the Purchaser of that Lot. The Association shall have all rights and remedies in connection with the nonpayment of a Reserve Fund Contribution as it has with respect to nonpayment of Assessments,

including without limitation the right to foreclose the Assessment Lien against the applicable Lot, and the right to recover its costs and expenses incurred in seeking to collect such amounts. Reserve Fund Contributions which are not paid when due shall bear interest until paid at the rate established by the Board pursuant to Subsection 6.8.1.

6.13.6 Initially, and unless and until adjusted by the Board as provided herein, the Reserve Fund Contribution Rate shall be one-fourth of one percent (0.25%). Subject to the remaining provisions of this Subsection 6.14.6, the Board may at any time increase or decrease the Reserve Fund Contribution Rate, with any such change to be effective as of the date the Board takes formal action to enact such change or such later date as the Board may establish at the time it takes formal action to enact such change; no such change shall apply to any transfer of title to a Lot completed prior to the date the Board takes formal action to enact such change. In no event, however, may the Board: (a) set the Reserve Fund Contribution Rate higher than one percent (1.0%); (b) increase the Reserve Fund Contribution Rate more frequently than once in any twelve-month period; or (c) increase the Reserve Fund Contribution Rate by more than one-eighth of one percent (0.125%) in any instance; that is, by way of example and not limitation, if the Board has established the Reserve Fund Contribution Rate at three-eighths of one percent (0.375%) effective as of March 1 in a particular calendar year, the Board cannot effect a further increase in the Reserve Fund Contribution Rate until at least March 1 of the immediately following calendar year, at which time the Board could increase the Reserve Fund Contribution Rate to no more than one-half of one percent (0.50%).

6.13.7 For all purposes under this Section 6.14, the "total sales price" for a Lot shall be the total gross consideration paid or given by the Purchaser for that Lot (together with any Residential Unit and any and all other Improvements on such Lot), without deduction for any liens, encumbrances or other debts or obligations affecting such Lot or assumed by the Purchaser in connection with its acquisition thereof, and without deduction for any commissions, selling expenses, prorations or the like. If all or any portion of the consideration paid or given by the Purchaser for the Lot is in a form other than cash, the portion of the total sales price for such Lot attributable to such non-cash consideration shall be the fair market value thereof (which fair market value, if the Purchaser and the Board are unable to agree, shall be as reasonably determined in good faith by the Board). The Purchaser shall provide the Association with such additional information and documentation relating to the Purchaser's acquisition of the Lot as the Board (or its representative) may reasonably request.

6.13.8 Notwithstanding any of the foregoing to the contrary, no Reserve Fund Contribution shall be due, payable or collected in connection with: (a) any purchase, sale or other transaction where the Purchaser is the Declarant or a Declarant Affiliate; (b) any purchase, sale or other transaction where the Purchaser is the Association (such as, for example, where the Association acquires title pursuant to foreclosure of the Assessment Lien); (c) a foreclosure sale, trustee's sale under a deed of trust or transfer in lieu thereof where, in any case, the Person acquiring title is an institutional lender exercising its remedies as a Mortgagee under a Mortgage, and such foreclosure, trustee's sale, deed in lieu of foreclosure or other exercise of remedies is not performed for purposes of avoiding payment of a Reserve Fund Contribution or any other amount payable to the Association (but any subsequent Purchaser from such Mortgagee, or any Purchaser at the applicable foreclosure sale, trustee's sale or transfer in lieu thereof other than such Mortgagee, shall be obligated to pay the applicable Reserve Fund Contribution); or (d) the conveyance of one or more Lots to a grantee which is a trust, partnership, corporation or other entity so long as such grantee is and remains wholly-owned by the grantor or by such

grantor and the grantor's spouse and/or children (but if the immediately preceding conveyance of the Lot(s) in question was exempted from payment of a Reserve Fund Contribution pursuant to this clause (d), then this exception shall not apply and a Reserve Fund Contribution shall be required); (e) in connection with the conveyance of one or more Lots by a grantor or such grantor's estate to the grantor's spouse and/or children (but if the immediately preceding conveyance of the Lot(s) in question was exempted from payment of a Reserve Fund Contribution pursuant to this clause (e), then this exception shall not apply and a Reserve Fund Contribution shall be required); or (f) in connection with the conveyance of an undivided interest in one or more Lots to the then-existing co-owner(s) of such property.

6.13.9 Notwithstanding any of the foregoing to the contrary, the Board may suspend collection of Reserve Fund Contributions, or may proportionately reduce the amounts of Reserve Fund Contributions, on a uniform, nondiscriminatory basis, at any time, and throughout any period, when the Board determines, in its good faith discretion, that the addition of further Reserve Fund Contributions (or addition of Reserve Fund Contributions in the full amounts otherwise payable under the preceding provisions of this Section 6.14) to the amounts then held in the Reserve Fund Account would cause the balance in such Reserve Fund Account to equal or exceed the total of all sums which are reasonably and prudently necessary to serve the purposes for which such Reserve Fund Account was created and to which such Reserve Fund Account was dedicated by the Board; nothing in this Subsection 6.14.9 shall, however, be deemed to prevent the Board from reinstating collection of Reserve Fund Contributions, or raising the amount of the required Reserve Fund Contributions to an amount not exceeding the amounts otherwise determined pursuant to Subsection 6.14.6, on a uniform, nondiscriminatory basis, at some later date with respect to subsequent Purchasers should the Board deem it necessary or prudent to do so.

ARTICLE 7

MAINTENANCE

7.1 Common Area and Public Right of Way.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Common Area and all Improvements located thereon (subject to Subsection 7.1.3), except the Association shall not be obligated to maintain areas which any governmental entity or any utility company is maintaining or is obligated to maintain. However, notwithstanding anything in this Article to the contrary, no Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Natural Open Space.

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

7.1.3 In the event the Plat, any deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Area or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants for the Association or an

individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract to provide maintenance service to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

7.2 Lots. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his, her or its Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot which is Natural Open Space, which shall be maintained by the Association. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. Landscaping shall be maintained as required by Section 3.4. However, notwithstanding anything in this Section to the contrary, no Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Natural Open Space.

7.3 Installation of Landscaping. The Owner of a Lot shall install (if not already installed) landscaping improvements (together with an irrigation system sufficient to adequately water such landscaping improvements) in accordance with plans and a schedule approved in writing by the Design Review Panel, and otherwise in accordance with the Design Review Rules. If such landscaping improvements and irrigation system are not installed on a Lot in accordance with plans and a schedule approved by the Design Review Panel as required by this Section, the Association shall have the right, but not the obligation, to enter upon such Lot to install such landscaping improvements as the Association deems appropriate (together with an irrigation system sufficient to adequately water the same), and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

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

7.5 Improper Maintenance and Use of Lots. In the event any portion of any Lot to be maintained by the Owner is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 15-day period the

requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

7.6 Maintenance of Natural Open Space. All property designated as Natural Open Space, whether by the Plat, this Declaration or by applicable zoning or other laws or ordinances, (i) shall not be further subdivided or split, (ii) shall be maintained by the Association in a natural, undisturbed condition with no development, construction, grubbing or clearing permitted, and (iii) no dumping of any kind, including refuse or other unsightly, offensive or toxic materials permitted and the Association shall promptly remove any litter, waste or debris as may be dumped, left or deposited thereon, and the Association shall otherwise protect and preserve the same and maintain the same in compliance with any and all applicable laws or ordinances, and with any applicable provisions of the Design Review Rules. The Association shall retain all responsibilities and bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the Natural Open Space, whether located on the Common Area or individual Lots. The Association shall be responsible for enforcing the restrictions on the use of the Natural Open Space, as set forth above, and for promptly repairing any damage done to the Natural Open Space in violation of these restrictions. Pima County shall also have the right, but shall not be obligated in any way, to enforce these restrictions. The Association shall defend and hold Pima County and its officers, employees and agents harmless from and against any loss, cost, liability or expense related to the maintenance, use (whether in compliance with or in violation of these restrictions) or disturbance of the Natural Open Space. This Section 7.6 shall not be modified without the prior approval of Pima County.

ARTICLE 8

INSURANCE

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

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

8.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$3,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of applicable law;

8.1.4 Directors' and officers' insurance coverage, fidelity insurance or bonds, and any and all such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

8.1.5 Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(a) The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

(b) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or adversely affect recovery on the policy;

(c) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance, which may be purchased by Owners, Occupants or Mortgagees;

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

(e) Statement naming the Association as the insured;

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

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

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

8.4 Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association, the loss shall be adjusted with the

Association, and the insurance proceeds shall be payable to the Association and not to any Mortgagee. Subject to the provisions of Section 8.5, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

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

ARTICLE 9

GENERAL PROVISIONS

9.1 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents.

9.2 Term; Method of Termination. Unless terminated in accordance with this Section, this Declaration shall continue in full force and effect for an initial term ending December 31, 2057, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. However, this Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Members holding ninety percent (90%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to applicable law.

9.3 Amendments.

9.3.1 Except for amendments made pursuant to Subsections 9.3.2 or 9.3.3 of this Declaration, this Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Members holding not less than seventy-five percent (75%) of the votes in the Association.

9.3.2 Either the Board or the Declarant may amend this Declaration, without obtaining the approval or consent of any Owner, Mortgagee or other Person, in order to conform this Declaration to the requirements or guidelines of any federal, state or local governmental (or quasi-

governmental) agency or entity whose approval of the Project or the Project Documents is required by law or requested by the Declarant.

9.3.3 So long as the Declarant is entitled to cast at least seventy-five percent (75%) of the votes in the Association, the Declarant may amend this Declaration without the consent or approval of any other Owner or other Person.

9.3.4 So long as the Declarant or any Declarant Affiliate owns any Lot or other portion of the Property, no amendment to this Declaration shall be effective unless approved in writing by the Declarant (or unless the Declarant, in a Recorded instrument, expressly waives its right to approve such amendments).

9.3.5 Any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsections 9.3.2 or 9.3.3 of this Declaration shall be executed by the Declarant and shall be Recorded.

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

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

9.6 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

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

9.8 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt, as part of the Association Rules, additional rules and regulations with respect to any other aspects of the Association's rights, activities and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Project Documents.

9.9 Laws, Ordinances and Regulations.

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

9.9.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein.

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

9.11 Gender and Number. Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

9.12 Captions and Title; Section References; Exhibits. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

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

9.14 Indemnification. The Association shall indemnify each and every officer and director of the Association, each and every member of the Design Review Panel, and each and every

member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Association, former members of the Design Review Panel, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, except for his or her own individual willful misfeasance, malfeasance, misconduct or bad faith. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Member of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 9.14 or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

9.15 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Area or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area, which shall be subject to Section 4.1) which may or may not be subject to this Declaration.

9.16 Property Held in Trust. Except as otherwise expressly provided in this Declaration, in the event any or all portions of the Property are now or hereafter held in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is the Declarant or a Declarant Affiliate, such shall be deemed for all purposes under this Declaration to be owned by the Declarant or such Declarant Affiliate, as applicable, and shall be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by the Declarant or such Declarant Affiliate, as applicable. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by the Declarant or any such Declarant Affiliate to any such trust (or the trustee thereof) or to the Declarant or any such Declarant Affiliate by any such trust (or the

trustee thereof) shall be deemed for purposes of this Declaration to be a sale of such property or any right, title or interest therein.

9.17 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

9.18 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Project Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

9.19 Disclaimer of Representations. Notwithstanding anything to the contrary herein, neither the Declarant nor any Declarant Affiliate makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that any real property now owned or hereafter acquired by the Declarant or by any Declarant Affiliate is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While neither the Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither the Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold the Declarant and all Declarant Affiliates harmless therefrom.

9.20 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon the Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in

any way, so long as the Declarant, any Declarant Affiliate or a trustee for the benefit of the Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of the Declarant.

ARTICLE 10

BULK SERVICE AGREEMENTS

10.1 Board's Authority. The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots within the Property, or within one or more portions thereof, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, data, communication or security services: (a) which might not otherwise be generally available to such Owners and Occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

10.2 Billing. If all Lots within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly). If not all Lots within the Property will be served by a particular Bulk Service Agreement the Board shall have only the billing option described in clause (b) above.

10.3 Payment. The Declarant, for each Lot, hereby covenants and agrees, and each Owner other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot) by the Board pursuant to this Article 10, and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

10.4 No Avoidance of Payment. No Owner of a Lot covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot under this Article 10, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no Residential Unit or other building has been completed.

10.5 Defined Terms. "Bulk Provider" means a private, public or quasi-public utility or other company which provides, or proposes to provide, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, data, communication or security services to Lots within the Property, or within one or more portions thereof, pursuant to a "Bulk Service Agreement" (as defined below). "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television or other electronic entertainment, information, data, communication or security services to Lots within the Property, or within one or more portions thereof.

10.6 Period of Declarant Control. During the Period of Declarant Control, the Board shall not, without the approval of Members holding at least fifty-one percent (51%) of all Class A votes represented in person or by absentee ballot at an annual or special meeting of the Members of the Association, enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant or a Developer which, in either case, agrees in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any such cable television, community satellite television, high speed Internet, security monitoring or electronic entertainment, information, data, or communication or security services, but nothing in this Section 10.6 shall prevent the Board from entering into, or require approval by the Members of, any Bulk Service Agreement which imposes on the Association or its Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Tucson, Arizona, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

ARTICLE 11

DISPUTE RESOLUTION FOR DEVELOPMENT AND CONSTRUCTION RELATED MATTERS

11.1 Background. It is Declarant's intent that all Improvements constructed by any builder who may construct a Residential Unit or other building within the Project including, without limitation, any Developer and Declarant (each, a "Builder" and, collectively, the "Builders") shall be built in compliance with all applicable building codes and ordinances and will be of a quality that is consistent with good construction and development practices. Nevertheless, disputes may arise as to whether a defect exists with respect to the construction by a Builder of any of the Improvements constructed within the Project and a Builder's responsibility therefor. It is the intent of the Builders that all disputes and claims regarding Alleged Defects (as defined below) be resolved amicably, and without

the necessity of time-consuming and costly litigation. Accordingly, the Association, the Board, the Builders and all Owners shall be bound by the claim resolution procedures, provisions and limitations set forth or described in this Article 11.

11.2 Limitation on Owners' Remedies. In the event that the Association, the Board or any Owner (collectively, "Claimant") claims, contends or alleges that any portion of a Residential Unit or other building or improvement on a Lot, any Common Area Improvements or any other part of any Project is defective or that one or more of the Builders, their agents, consultants, contractors or subcontractors (collectively, "Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), the only right or remedy that any Claimant shall have with regard to any such Alleged Defect is the right to have the Alleged Defect repaired and/or replaced by the Builder which was responsible for the construction of the Improvement which is the subject of the Alleged Defect, but such right or remedy shall only be available if and to the extent such Builder is, at that time, still obligated to repair such Alleged Defect pursuant to applicable statutes or common law or pursuant to any applicable rules, regulations and guidelines imposed by the Arizona Registrar of Contractors (the "Applicable Laws"). By accepting a deed to a Lot, each Owner shall, with respect to any Alleged Defect(s), be deemed to have waived the right to seek damages or other legal or equitable remedies from any Builder or from any affiliates, subcontractors, agents, vendors, suppliers, design professionals and materialmen of any Builder under any common law, statutes and other theories of liability, including, but not limited to, negligence, tort and strict liability. Under no circumstances will any Builder or Declarant be liable for any consequential, indirect, special, punitive or other damages, including, but not limited to, any damages based on a claim of diminution in the value of the Claimant's Lot or Residential Unit and each Owner, by accepting a deed to a Unit, shall be deemed to have waived its right to pursue any such damages. It shall be a condition to a Claimant's rights and a Builder's obligations under this Article that the Claimant fully and timely abide by the requirements and conditions set forth in this Article. To accommodate the Builders' right to repair and/or replace an Alleged Defect, the Builders hereby reserve the right for themselves to be notified of all such Alleged Defects and to enter onto the Project, Common Areas and Lots to inspect, repair and/or replace such Alleged Defect(s) as set forth herein.

11.3 Notice of Alleged Defect. In the event that a Claimant discovers any Alleged Defect, Claimant shall within fifteen (15) days of discovery of the Alleged Defect provide the Builder which constructed the Improvement which is the subject of the Alleged Defect with written notice of the Alleged Defect, and of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

11.4 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by a Builder of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Builder, such Builder shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Lot and the Residential Unit and other Improvements thereon, Common Area or other part of the Project as may be necessary or appropriate for the purposes of inspecting and/or conducting testing and, if deemed necessary by the Builder, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacements, Builder shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances to repair or correct any such Alleged Defect.

11.5 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section shall be construed to impose any obligation on Builders to inspect, test, repair or replace any item or Alleged Defect for which Builders are not otherwise obligated to do so under Applicable Laws or by contract. Specifically, a Builder's obligation to repair and/or replace an Alleged Defect shall expire upon the expiration of any applicable warranty provided by Builder for such item, if any, or on any later applicable date which the Applicable Laws specify or recognize as the date(s) through which a contractor is responsible for such Alleged Defect. The right of Builders to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Builders.

11.6 Tolling of Statutes of Limitations. In no event shall any statutes of limitations be tolled during the period in which a Builder conducts any inspection or testing of any Alleged Defects.

11.7 Binding Arbitration. In the event of a dispute between or among a Builder, its contractors, subcontractors or brokers or their agents or employees, on the one hand, and any Owner or the Association, on the other hand, regarding any controversy or claim between the parties, including any claim based on contract, tort, statute or any other theory of liability arising out of or relating to the rights or duties of the parties under this Declaration, the design or construction of the Project, any Lot or any Residential Unit or other Improvement thereon, any Common Area Improvement or any part of the Project or an Alleged Defect, the matter shall be resolved by binding arbitration conducted in accordance with the requirements, terms and provisions set forth in this Section 11.7.

11.7.1 Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").

11.7.2 Condition to Initiation of Arbitration. In the event a dispute arises regarding an Alleged Defect and the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any proceeding or arbitration against a Builder which notice shall (at a minimum) include (i) a description of the Alleged Defect; (ii) a description of the Builder's position related to such Alleged Defect and any attempts of the affected Builder to correct such Alleged Defect and the opportunities provided to the affected Builder to correct such Alleged Defect; (iii) a certification from an engineer licensed in the State of Arizona, confirming its opinion of the existence of such Alleged Defect and a resume of such engineer; (iv) the estimated cost to repair such Alleged Defect; (v) the name and professional background of the attorney retained by the Association to pursue the claim against the Builder and a description of the relationship between such attorney and member(s) of the Board of Directors, if any; (vi) a thorough description of the fee arrangement or proposed fee arrangement between such attorney and the Association; (vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Builder(s) and the source of the funds which will be used to pay such fees and expenses; (viii) the estimated time necessary to conclude the action against Builder; and (ix) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. In the event the Association recovers any funds from Declarant(s) (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

11.7.3 Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501 et. seq. In the event of a conflict between the AAA Rules and this Section, the provisions of this Section shall govern.

11.7.4 Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection is referred to in this Section as the "Arbitrator".

11.7.5 Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.

11.7.6 Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 11.7.4 above.

11.7.7 Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's hourly rate, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

11.7.8 Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Guidelines, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should

engage one or more neutral experts and whether, if this is done, engagement of experts by the Parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious and cost-effective conduct of the proceeding.

11.7.9 Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

11.7.10 Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be

confidential and not disclosed to anyone other than the Arbitrator, the parties and the parties attorneys and expert witnesses (where applicable to their testimony), except that, upon the prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

11.7.11 Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

11.7.12 Final Award. The Arbitrator shall promptly, within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree, determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration and other relevant factors. The Arbitrator shall have absolutely no ability or authority to award any damages of any kind except for the actual cost to repair any defect for which a Builder is found to be responsible and which such Builder fails to correct. Accordingly, except for the actual damages referred to in the preceding sentence, the Arbitrator shall not award indirect, consequential, special, punitive or other damages. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

11.7.13 Statute of Limitations. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section shall apply to the commencement of arbitration proceedings under this Section. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

11.8 Approval of Legal Proceedings. The Association shall not incur attorneys' fees or other legal expenses in connection with any legal proceedings without the written approval of Owners holding more than two-thirds (2/3) of the total votes in the Association, excluding the vote of any Owner who would be a defendant in such proceedings. The Association must finance any such legal proceeding with monies that are specifically collected for same and may not borrow money or use working capital or reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Owners must notify prospective purchasers of the existence of such legal proceedings and must provide such prospective purchasers with a copy of any applicable notice provided by the Association in accordance with Subsection 11.7.2. This Section shall not apply to legal proceedings initiated by the Association to collect any unpaid Assessments levied pursuant to this Declaration or to enforce against any Owners (other than a Declarant or a Builder) any covenants, conditions, restrictions or easements contained in this Declaration.

11.9 As-Built Conditions. Various engineering and architectural plans pertaining to the Project, including, but not limited to, the Plat, subdivision maps, grading plans, plot plans, improvement plans and building plans (collectively, the "Plans"), contain dimensions regarding certain aspects of the Lots, Common Areas and other parts and aspects of the Project. By accepting a deed to a Lot, each Owner shall be deemed to have acknowledged and agreed that (a) if there is a discrepancy between the Plans and the actual as-built conditions of any Lot, Common Area or any other Improvement within the

Project, the as-built conditions will control and be deemed to be accepted as-is by the Owner; (b) the usable or buildable area, location and configuration of the Lot, Common Areas and any other Improvements located within the Project may deviate from the Plans or from any other display or configuration related thereto; (c) the location, size, height and composition of all walls and fences to be constructed on or as part of a Lot or adjacent thereto shall be determined by Builders in their sole and absolute discretion. Despite the Plans or any other materials that may exist, Builders shall be deemed to have made no representations, warranties or assurances with respect to any such matters or with respect to the size, height, location or composition of any wall or fence to be constructed on or adjacent to any Lots; and (d) each Owner waives the right to make any demands of or claims against Builders as a result of any discrepancies between the Plans and any actual as-built conditions of any Lot.

11.10 Limitation on Declarant's and Builders' Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner, and each other person, by acquiring any interest in the Project, acknowledges and agrees, that neither Declarant nor Builders (including, but not limited to, any assignee of the interest of Declarant or a Builder) nor any partner, shareholder, officer, director, employee or affiliate of Declarant or a Builder shall have any personal liability to the Association, or to any Owner, Member or other Person, arising under or in connection with this Declaration or resulting from any action or failure to act with respect to this Declaration, the Association or the Committee except, in the case of Declarant and Builders (or their assignees), to the extent of their respective interests in the Project; and, in the event of a judgment against any such parties no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor. Neither Declarant nor the Association shall be liable for any theft, vandalism, disturbance, accident, unauthorized entrance or other similar occurrence or breach of the peace or security which may occur or take place within the Project.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

DECLARANT:

First American Title Insurance Company
a California corporation, as Trustee under
Trust No. 9143, and not personally

By:


Name: Rachel L. Turnipseed

Title: Trust Officer

...

...

...

STATE OF ARIZONA)
) ss.
County of Pima)

Acknowledged before me this 8 day of January, 2007, by Rachel L. Turnipseed, the Trust Officer of First American Title Insurance Company, a California corporation, as Trustee under Trust No. 9143, and not personally.

Cynthia Stumpf
Notary Public

My Commission Expires:

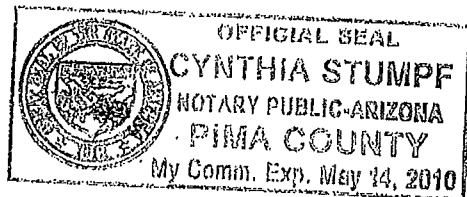


EXHIBIT A

LEGAL DESCRIPTION

Lots 1 through 15 and Common Areas "A" and "B" of THE RESERVE AT SAGUARO PARK,
recorded in Book _____, Page _____ of Maps, records of Pima County, Arizona