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**COVENANTS, CONDITIONS AND RESTRICTIONS FOR
MONTAÑAS DEL SOL LOTS 1 - 48
AND COMMON AREAS "A" AND "B"**

^{1st} These Covenants, Conditions and Restrictions (the "Declaration") are made this day of MAY, 2008, by Fidelity National Title Agency, Inc., an Arizona corporation, as Trustee under Trust Number 60,294 (the "Declarant").

BACKGROUND

A. The Declarant is the sole owner of Montañas Del Sol, Lots 1-48 and Common Area "A" (Natural Open Space) and Common Area "B" (Drainage) as shown on the plat recorded in Book 63 of Maps and Plats at page 71, Pima County Records (the Property).

ARTICLE 1

DEFINITIONS

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

1.2 **"Architectural Committee"** means the committee of the Association be created pursuant to Section 5.10 of this Declaration.

1.3 **"Architectural Committee Rules"** means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as they may from time to time be amended or supplemented.

1.4 **"Areas of Association Responsibility"** means (I) all land, and the Improvements situated thereon, situated within the Project which the Association acknowledges in a recorded document is property which is to be improved, maintained, repaired and replaced by the Association, and (II) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any

county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

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

1.6 **“Assessment”** means an Annual Assessment or Special Assessment.

1.7 **“Assessment Lien”** means the lien created and imposed by Article 6 of this Declaration.

1.8 **“Assessment Period”** means the period set forth in Section 6.6 of this Declaration.

1.9 **“Association”** means Montañas Del Sol Homeowners Association, an Arizona nonprofit corporation and its successors and assigns.

1.10 **“Association Rules”** means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

1.11 **“Board”** means the Board of Directors of the Association.

1.12 **“Bylaws”** means the Bylaws of the Association, as they may from time to time be amended.

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

1.14 **“Declarant”** means Fidelity National Title Agency, Inc., an Arizona Corporation as Trustee under Trust Number 60,294, and its successors and any persons or entities to whom it may have expressly in writing assigned all or any parts of its rights and duties under this Declaration.

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

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

1.17 **“Lessee”** means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.

1.18 **“Lot”** means those portions of the Project intended for independent ownership and use and designated as Lots 1-48 on the Plat and, where the context

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indicates or requires, shall include any Residential Unit, Building, structure or other improvements situated on the Lot.

1.19 **“Maintenance Standard”** means the standard of maintenance of improvements established from time to time by the Board or, the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.20 **“Member”** means any Person who is a Member of the Association.

1.21 **“Owner”** means the record owner, whether one or more Person, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (I) Persons having an interest in a Lot merely as security for the performance of an obligation, or (II) a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. 33-741 *et. Seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is bested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

1.23 **“Plat”** means the plat of Montañas Del Sol, Lots 1-48 and Common Area “A” (Natural Open Space) and Common Area “B” (Drainage) recorded in Book _____ of Maps, page _____, records of Pima County, Arizona, and all amendments, supplements and corrections thereto.

1.24 **“Property” or “Project”** means Lots 1 through 48 and Common Area “A” (Natural Open Space) and Common Area “B” (Drainage) as shown on the Plat together with all Improvements located thereon.

1.25 **“Project Documents”** means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

1.26 **“Purchaser”** means any person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for (I) 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 (II) a Person who, in additions to purchasing a Lot, is assigned any or all of the Declarant’s rights under this Declaration.

1.27 **“Recording”** means placing an instrument of public record in the office of the County Recorder of Pima County, Arizona, and **“Recorded”** means having been so placed of public record.

1.28 **“Resident”** means each individual occupying or residing in any Residential Unit.

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

1.30 **“Single Family”** means a group of one or more persons each related to the other by blood marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.31 **“Special Assessment”** means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

1.32 **“Visible From Neighboring Property”** means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at main grade level on any other Lot at least six feet from a property line on such other Lot.

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ARTICLE 2

PLAN OF DEVELOPMENT

2.1 **Property Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. Declarant declares that all of the Lots within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself, his 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 and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of Lots within the Property and hereby evidences his interest 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. Declarant covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 **Disclaimer of Representatives.** Declarant makes no representations or warranties whatsoever that (I) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (II) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (III) the use of any Property subject to this Declaration will not be changed in the future.

ARTICLE 3

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

3.1 **Architectural Control.**

3.1.1 All improvements constructed on Lots shall be of new construction and no building or other structures shall be removed from other locations on to any Lot.

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

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3.1.3 No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee nor shall any improvements, alterations or repairs be made to the Natural Undisturbed Open Space.

3.1.4 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 Lot, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee.

3.1.5 Any Owner desiring approval of the Architectural Committee for 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 the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request.

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

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

3.1.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.1.9 Approval of Plans by the Architectural Committee shall relate only to the conformity of plans and specifications to general architectural and landscaping requirements for the property, and such plans, drawings, and specifications, the Architectural Committee does not assume liability or responsibility therefore, or for any defect in any structure constructed from such plans, drawings and specifications.

3.1.10 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.11 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

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

3.2 **Temporary Occupancy and Temporary Buildings.** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary building or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary building, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such building, trailer or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Architectural Committee.

3.3 **Landscape Restrictions.** No more than 14,000 square feet of each lot may be disturbed for landscaping. Areas excluded from this limitation are areas graded for house (including garage and covered patios), driveway, septic system and utility trenching. The total area of irrigated landscaping within the disturbed or improved area on each lot shall not exceed 6,000 square feet, of which no more than 1,500 square feet will be high water use plants (plants that are not on the list of acceptable plant materials in the Design Guidelines), with the remaining 4,500 square feet being low water use or native plants as shown in the Design Guidelines. A list of acceptable plant materials is provided in the Design Guidelines, which conform to the Arizona Department of Water Resources Low Water Use/Drought Tolerant Plant list for the Tucson Active Management Area. Landscaped area on each lot beyond the disturbed or improved area must be native plants that are not irrigated.

3.3.1 Maintenance of Plantings. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (I) his Lot, (II) 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, and (III) any no-street public right-of-way or easement area adjacent to his Lot, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (x) the Association

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assumes the responsibility in writing; (y) the Association has been given such responsibility by this Declaration; or (z) Pima County or any other governmental authority having jurisdiction over such property assumes responsibility, for so long as the Association or Pima County or other such governmental authority assumes or has responsibility.

3.4 **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot; and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot 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 shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building material will be piled only in such areas as maybe approved in writing by the Architectural Committee. In addition, any construction equipment and building material stored or kept on any Lot during the construction of Improvement may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance during the period of time when Improvements are being constructed. Thereafter the Board in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

3.5 **Diseases and Insects.** No person shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

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

3.7 **Antennas.** No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee.

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3.8 **Mineral Exploration.** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, mineral of any kind, gravel, earth or any earth substance of any kind.

3.9 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Architectural Committee. 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 shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any lot. The Association shall have the right from time to time to either a) specify a single provider of trash collection services within the Project or b) contract on behalf of all Lot Owners for trash collection services with a single source and include the cost of such contract as a Common Expense in the Annual Assessment provided for in paragraph 6.2.1.

3.10 **Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible from Neighboring Property.

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

3.12 **Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or other wise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

3.13 **Health, Safety, and Welfare.** In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents, the Board may make rules restricting or regulating their presence in the Project as part of the Association Rules or may direct the Architectural Rules or may direct the Architectural Committee to make rules governing their presence on Lots as part of the Architectural Committee Rules.

3.14 **Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit may conduct a business activity within a Residential Unit so long as (I) the existence or operation of the business

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activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (II) the business activity conforms to all applicable zoning ordinances or requirements for the Project, (III) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project, and (IV) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents the Project, as may be determined from time to time in the discretion of the Board. The terms “business” and “trade” as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (I) such activity is engaged in full or part time, (II) such activity is intended or does generate a profit, or (III) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.15 **Animals.** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except for no more than two dogs or cats, parakeets or similar household birds may be kept on a Lot if they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other pets permitted under this Section shall be confined to an Owner’s Lot except that a dog or cat may be permitted to leave an Owner’s Lot if such dog or cat is at all times kept on a leash not to exceed six feet (6’) in length and is not permitted to enter upon any other Lot. No animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Owner, Lessee, or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

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

3.17 **Signs.** No signs whatsoever (including, but not limited to, commercial, political, “for sale”, “for rent” and similar signs) which are Visible from Neighboring Property shall be erected or maintained on any Lot except:

3.17.1 Signs required by legal proceedings.

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3.17.2 Residence identification signs provided the size, color, Content and location of such signs have been approved in writing by the Architectural Committee.

3.17.3 One (1) "For Sale" sign provided the size, color, design, Message content, location and type have been approved in writing by the Architectural Committee.

3.17.4 Such other signage specifically approved by the Board.

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

3.19 **Motor Vehicles.**

3.19.1 Except for emergency vehicle repairs, no motor vehicle of any kind shall be constructed, reconstructed or repaired upon a Lot or other property in the Project, and no inoperable vehicle may be stored or parked on any such Lot so as to be Visible From Neighboring Property or to be visible from any street.

3.19.2 No motor vehicle of any kind shall be parked on any private road or street in the Project, except for motor vehicles of guests of Owners which may be parked on a private road or street in the Project for a period of not more than forty-eight (48) hours within any seven day period in accordance with rules for such temporary parking adopted by the Board.

3.19.3 Resident's permitted motor vehicles must be parked in the garage of the Residential Unit until such time as the number of automobiles or other motor vehicles parked in the garage exceeds the number for which the garage was designed at which time such permitted motor vehicles may be parked in the driveway situated on the Lot. No automobile or other vehicle may be parked in such a manner as to block any sidewalk.

3.19.4 No truck, bus, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked on any Lot or on any street so as to be Visible From Neighboring Property Area without approval of the Architectural Committee; except for (I) the temporary parking of any such vehicle or equipment on a

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Lot or on a street for a period of not more than forty-eight hours (48) within any seven (7) day period, in accordance with rules for such temporary parking adopted by the Board (II) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; (III) boats and vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; or (IV) motor vehicles not exceeding seven (7) feet in height and eighteen (18) feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind.

3.20 **Towing of Vehicles.** The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor 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 or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment.

3.21 **Variances.** The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (I) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (II) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

3.22 **Change of Use.** Upon (I) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Area of Association Responsibility is no longer in the best interests of the Owners and (II) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such Area of Association Responsibility 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 building, structure and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners and shall be consistent with any zoning regulation restricting or limiting the use of the Area of Association Responsibility.

3.23 **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

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accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

3.24 **Garages and Driveways.** Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee. No person shall store or keep materials in a garage or otherwise use a garage in any manner which would prevent the use of the garage for the parking of the number of vehicles for which the garage was designed.

3.25 **Rooftop Equipment.** No heating or cooling equipment including air conditioning units, swamp coolers or solar panels or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee.

ARTICLE 4

EASEMENTS

4.1 **Utility Easement.** There is hereby created an easement upon, across, over and under the Common Areas, if any, and utility easements over and under the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Areas, if any, or utility easements over and under the Lots but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Areas, if any, or Lots except as initially designed, approved and constructed by the Declarant or as approved by the Board.

4.2 **Declarant's Use for Sales and Leasing Purposes.** Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs within the Project. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Areas, if any, in such number, of such size and in such locations as Declarant deems appropriate. The rights granted to Declarant under this paragraph may be assigned to one or more builders within the Project without the necessity of the Declarant assigning its entire interest in the Project to such builder(s). In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Declaration, this Section shall control.

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4.3 **Declarant's Easements.**

4.3.1 Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by 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.

4.3.2 The Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations and exercising the rights granted to or reserved by the Declarant by this Declaration.

4.4 **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:

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

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

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

4.4.4 Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents, including, but not limited to the repair and maintenance of all Areas of Association Responsibility;

4.4.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

ARTICLE 5

**THE ASSOCIATION; ORGANIZATION; MEMBERSHIP
AND VOTING RIGHTS**

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

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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 Bylaws. Unless the Project Document specifically requires the vote or written consent of the Member, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. In accordance with such procedures as may be set forth in the Bylaws, the Board shall have the right to impose reasonable fines against an Owner for a violation of any provision of the Project Documents by the Owner, his family, tenants or guests.

5.3 **The Association Rules.** The Board may, from time to time, and subject to the provision of this Declaration, adopt, amend and repeal rules and regulations pertaining to (I) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility, (II) minimum standards for any maintenance of Lots, or (III) 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 or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

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

5.7 **Classes of Members.** The Association shall have two classes of voting membership:

5.7.1 **Class A.** Class A member shall be all Owners with the exception of the Declarant until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned.

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5.7.2 **Class B.** The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of (I) the date on which the Declarant no longer owns any Lots within the Project; (II) the date which is ten (10) years after the recording of this Declaration; or (III) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

5.8 **Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provide satisfactory proof thereof. The vote for each such 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 or entity and such Owners are unable to agree among themselves as to how their vote or votes shall e 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 other Owners of the same Lot unless abjection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, one of the votes shall be counted and all of the votes shall be deemed void.

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 to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

5.10 **Architectural Committee.** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lots, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Lots, that specified actions of the Architectural Committee, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions. The decision

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of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration, provided that, at such time as the Declarant no longer owns any Lot (or has voluntarily surrendered its right to appoint and remove members of the Architectural Committee), the Board may require that some or all decisions of the Architectural Committee shall require Board approval. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

5.11 **Suspension of Voting Rights.** If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorney's fee, are brought current, and until any other infractions or violations of the Project Document are corrected.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 **Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned by it, 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 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 collection 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 cost, 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 the person who was the 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.

6.2 **Annual Assessments.**

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment and replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot an Annual Assessment.

6.2.2 The Board shall give notice of the Annual Assessment to

each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board or relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Member, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.2.3 The Maximum Annual Assessment for each fiscal year of the Association shall be as follows:

(I) Until January 1 of the year immediately following the conveyance of the first Lot to a purchaser, the maximum Annual Assessment for each Lot shall be \$120.

(II) From and after January 1 of the year immediately following the conveyance of the first lot to a Purchaser, the Board may, without a vote of the members, increase the maximum Annual Assessment during each fiscal year of the Association by the greater of (a) six percent (6%) of the maximum Annual Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average(1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics(the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

X= Consumer Price Index for September of the calendar year immediately preceding the year in which the Annual Assessments commenced.

Y= Consumer Price Index for September of the year immediately preceding the calendar year for which the maximum Annual Assessment is to be determined.

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X multiplied by the maximum Annual Assessment for the then current fiscal year equals the amount by which the maximum Annual Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the maximum Annual Assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor index is recommended by the United States government, the index selected by the Board.

(III) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum Annual Assessment for each Lot may be increased by an amount greater than the maximum increase allowed pursuant

to (II) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the voted entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.2.4 The Annual Assessment for Lots owned by the Declarant shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Lots owned by persons other than the Declarant until such time as a Residential Unit has been constructed on the Lot owned by the Declarant and the Residential Unit has been occupied for Single Family Residential Use, the amount of the Annual Assessment for such Lot shall be the same as the Annual Assessment levied against Lots owned by Persons other than the Declarant. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate. So long as there is a Class B membership in the Association, the Declarant shall pay to the Association any amounts which, in addition to the Annual Assessments levied by the Association, may be required by the Association in order for the Association to fully perform its duties and obligations under the Project Documents.

6.3 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Annual Assessments shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.4 **Commencement of Annual Assessment.** The Annual Assessment shall commence as to all Lots upon the conveyance of the first Lot to a Purchaser.

6.5 **Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The 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 therefore 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 installation 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.

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6.6 **Effect of Nonpayment of Assessments; Remedies of the Association.**

6.6.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve percent (12%) per annum or the prevailing VA/FHA interest rate for new home loans, whichever is higher. In addition, the Board of Directors may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within five days after such payment was due.

6.6.2 The Association shall have a lien on each Lot for (I) all Assessments levied against the Lot, (II) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot, (III) all fines levied against the Owner of the Lot, and (IV) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot. 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 record of the association 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 attorney' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any member of default may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with the recording a Notice of Lien against the Lot.

6.6.3 The Assessment Lien shall have priority over all liens or claims except for (I) tax liens for real property taxes, (II) assessments in favor of any municipal or other governmental body and (III) the lien of any first mortgage or first deed of trust. Any First Mortgage or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

6.6.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessment; interest, lien fees, fines, reasonable

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attorney's fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.6.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fee, reasonable attorneys' fees, and any other sums due to the Association in any manner allowed by law including, but not limited to, (I) 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 (II) 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 in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.7 **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 (I) 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 (II) 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 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.

6.8 **Purposes for which Association's Funds May be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the common good and benefit of the Project and the Owners and Residents 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 Residents. The following are some, but not all, of the areas in which the association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, public right-of-way and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds under the laws of the State of Arizona or such municipality's charter.

6.9 **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

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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 purpose.

6.10 **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, except that no transfer fee shall be payable with respect to the purchase of a Lot with respect to the initial sale by the Declarant to the first owner of a Lot.

ARTICLE 7

MAINTENANCE

7.1 **Areas of Association Responsibility and Public Right of Way.**

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, including but not limited to: maintaining, landscaping and insuring drainage easement, identified as Common Area "B" (Drainage) on the Plat; entry landscaping; Areas of which are intended for the benefit of all the Owners. The Association shall not maintain areas which any governmental entity is maintaining or is obligated to maintain. No improvements, alterations or repairs are to be made to the Natural Undisturbed Open Space.

7.1.2 The Board, subject to the request of any governmental authority, shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative. The Association shall be responsible for control, maintenance and payment of ad valorem taxes and liability of the Common Areas.

7.2 **Lots.** Each owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot which is an Area of Association Responsibility. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, work piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residential

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Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

7.3 **Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, 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 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.

7.4 **Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality for 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 any portion of a Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) working days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorize 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.

7.5 **Common Walls.** The rights and duties of Owners of Lots with respect to common walls shall be as follows:

7.5.1 The Owners of contiguous Lots who have a common wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner;

7.5.2 In the event that any common wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the common wall without cost to the other Owner or Owners;

7.5.3 In the event any such common wall is damaged or destroyed by some cause other than the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the common wall without cost to the other Owner or Owners;

7.5.4 Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any common wall to be exposed to

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the elements shall bear the whole cost of furnishing the necessary protection against such elements;

7.5.5 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;

7.5.6 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners;

7.5.7 In the event any common wall encroaches upon a Lot or a Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall.

7.6 **Maintenance of Walls other than Common Walls.**

7.6.1 The exterior surface of the Monument walls facing Camino Loma Alta will be an Area of Association Responsibility maintained by the Association pursuant to the terms of Project Documents.

7.6.2 Except as provided in 7.6.1, walls (other than common walls and boundary perimeter wall) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

7.6.3 Any wall which is placed on the boundary line between a Lot and a Common Area, if any, with the approval of the Architectural Committee shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area, if any.

ARTICLE 8

INSURANCE

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

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

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

8.1.2 Property insurance of all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall to be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

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

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

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

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

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

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

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

(V) Statement of the name of the insured as the Association;

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

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

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

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

8.5 **Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (I) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (II) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to 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 process 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

RIGHTS OF MORTGAGEES

The lien for assessments as set forth in Article 6 shall be subordinate to the lien of any mortgage or deed of trust made in good faith for value covering said Lot, which mortgage or deed of assessment; provided, however, the lien for assessment will be binding and effective against the party who owns any such property during such period for which the assessment is made even though the title to such property is acquired through foreclosure, forfeiture, trustee's sale or otherwise. After foreclosure, forfeiture,

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trustee's sale or other proceeding, the party acquiring such lot shall be considered an Owner and Member for purposes of these Declarations.

ARTICLE 10

GENERAL PROVISIONS

10.1 **Enforcement.** The Association or any Owner shall have the right to enforce the Project Documents and/or any and all covenants, restrictions, reservation, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (I) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (II) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

10.2 **Term; Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. 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 the Owners representing ninety percent (90%) or more of the votes in each call of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary voted and consents are obtained, the Board shall cause to be recorded with the County Recorder of Pima County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

10.3 **Amendments.**

10.3.1 This Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of the sum of all Class A and B votes.

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

10.3.3 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

10.3.4 Any amendment approved pursuant to Subsection 12.3.1 of this Declaration or by the Board pursuant to Subsection 12.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County recorder of Pima County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

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

10.5 **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.

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

10.7 **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.

10.8 **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 rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

10.9 **Laws, Ordinances and Regulations.**

10.9.1 The covenants, conditions and restrictions set forth in this Declaration and the provision requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall

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not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

10.9.2 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 procedures set forth herein.

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

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

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

10.13 **Notices.** If notice of any action or proposed action by the board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within 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.

10.14 **No Absolute Liability.** No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Areas, if any, or the Lots. Owners shall only be responsible for damage to the Common Areas, if any, or Lots caused by the Owner's negligence or intentional acts.

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BY-LAWS OF
MONTANAS DEL SOL HOMEOWNERS ASSOCIATION

Pursuant to the provision of Article I, Chapter 5, Title 10, Arizona Revised Statutes, the above Arizona nonprofit corporation hereby adopts the following By-Laws:

ARTICLE I

NAME AND LOCATION

The name of the corporation is Montanas del Sol Homeowners Association, hereafter referred to as the "Association." The principal office of the Association shall be at 11125 N. La Canada Dr., Suite 201, Oro Valley, AZ 85737, but meeting of Members and Directors may be held at such place within the State of Arizona, County of Pima, as may be designated by the board of Directors.

ARTICLE II

DEFINITIONS

Section 2.1 "Association" shall mean and refer to Montanas del Sol Homeowners Association, an Arizona non-profit corporation, its successors and assigns.

Section 2.2 "Properties" shall mean and refer to that certain real property described in the Declaration.

Section 2.3 "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners, and all improvements thereto.

Section 2.4 "Lot" shall mean and refer to Lots shown upon any recorded subdivision plat of the Properties with the exception of any areas designated thereon as Common Areas. "Lot" shall include lots later annexed in accordance with the Declaration.

Section 2.5 "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2.6 "Declarant" shall mean and refer to Fidelity National Title Agency, Inc., an Arizona Corporation as Trustee under Trust #60,294, and its successors and assigns so designated in writing that acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development.

Section 2.7 "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Montanas del Sol applicable to the Properties and recorded in the Office of the Pima county Recorder, State of Arizona, as they may be amended from time to time. Capitalized terms used in these By-Laws without definition shall have the meanings specified for such terms in the Declaration.

Section 2.8 "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

ARTICLE III

MEETING OF MEMBERS

Section 3.1 Annual Meetings. The annual meeting of the Members shall be held on the first Wednesday of each December, and the first annual meeting of the Members shall be held within one (1) year from the date of Incorporation of the Association. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

Section 3.2 Special Meetings. Special meeting of the Members may be called at any time by the President or by the Board of Directors, by Declarant, or upon written request of the Members who are entitled to vote one-tenth (1/10) of all of the votes entitled to be cast by the Membership.

Section 3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary of person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days, and no more than fifty (50) days, before such meeting to each Member entitled to vote thereafter, addressed to the Member's address last appearing on the books of the Association, or supplied by such Members to the Association for the purpose of this notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 3.4 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, twenty-five percent (25%) of the votes of each class of membership shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented; provided, however, that if the adjournment is for more than thirty (30) days, notice shall be given to each Member entitled to vote at the meeting.

Section 3.5 Proxies. At all meetings of members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. An Owner may not revoke a proxy except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is revoked on presentation of a later dated proxy executed by the same Owner. A proxy terminated one (1) year after the date of its execution, unless it states that it is coupled with an interest and is irrevocable, whereupon it shall terminate twenty-five (25) months after the date of its execution.

ARTICLE IV

BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 4.1 Number. The affairs of the Association shall be managed by the Board. The initial Board and each Board thereafter for so long as the Class B Membership exists shall consist of three (3) directors elected by Class B Members, who need not be Members of the Association nor Owners of Lots. Commencing with the first annual meeting of the Members thereafter, the Board shall consist of, and the

voting shall elect, five (5) directors, each of whom must be a Member or an individual designated by a corporation, partnership, to other non-individual Member (including Declarant and Developer) who own one (1) or more lots.

Section 4.2 Terms of Office. The directors shall be elected at the annual meeting of the Members, and the term of the directors, during the existence of the Class B Membership, shall be one (1) year or until the director shall resign or die or be removed. The terms of the five (5) directors elected at the first annual meeting of the Members after the Class B Membership ceases, shall be one (1) director for a one (1) year term, two (2) directors for a two (2) year term, and two (2) directors for a three (3) year term, thus establishing a staggered Board. In succeeding years, all directors shall be elected for a three (3) year term.

Section 4.3 Removal. Any director may be removed from the Board, with or without cause, by Members having two-thirds (2/3) of the votes entitled to be cast by the Members present in person or by proxy at a meeting of the Members, except that no director elected by the Class B Members may be removed without the consent of the holder(s) of a majority of the Class B votes during the existence of the Class B Membership. Any director so removed by the Members shall be replaced by a director elected by the Members at the same meeting. IN the event of a death or resignation of a director, his successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of his predecessor.

Section 4.4 Compensation. No director shall receive compensation for any service he may render to the Association that is within his duties as a director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 4.5 Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

Section 5.1 Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two (2) or more Members of the Association. The Nominating committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among individual Members or individuals designated to incorporate, partnership, and other non-individual Members.

Section 5.2 Election. Election to the Board of Directors shall be by secret written ballot. In any such election, every Owner entitled to vote shall be entitled to cast the number of votes attributable to such Owner multiplied by the number of directors to be elected. Each Owner shall have the right to cumulate the Owner's votes for one (1) candidate or to divide such votes among any number of the candidates. Voting for directors may be done by mail.

Section 5.3 Right of Appointment. Notwithstanding the above, the directors shall, so long as the Class B Membership exists, be elected solely by the Class B Member(s). In any such election, each Class B Member entitled to vote as such an election shall have the number of votes s determined under the Declaration multiplied by the number of directors to be elected. Each Class B Member shall have the right to cumulate its votes for (1) candidate, or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board Members to be elected, shall be deemed elected to the Board.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 6.1 Regular Meetings. Regular meetings of the Board of Directors shall be held at least once per calendar year, at such place and hour as may be fixed from time to time by resolution of the Board. Such meetings shall be open to all Members (although Members who are not Directors shall not be permitted to participate in any discussion of the Board at such meeting unless expressly authorized to do so by a majority of a quorum of the Board); provided, however, that any meeting or portion thereof may be closed if limited to one or more of the following:

- A. Discussing employment or personnel matters for employees of the Board or Association;
- B. Obtaining legal advice from an attorney for the Board or the Association;
- C. Discussing pending or contemplated litigation; or
- D. Discussing pending or contemplated matters relating to enforcement of the Associations Rules or the Declaration or these By-Laws.

Section 6.2 Special Meetings. Special meeting so the Board of Directors shall be held When called by the President of the Association, or by any two (2) directors, after not less than three (3) days written notice to each director.

Section 6.3 Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.1 Powers. In addition to all other powers, the Board of Directors shall have power to:

- A. Adopt and publish rules and regulations governing the use of the Common Areas and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- B. Suspend the voting rights and the right of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed fifty (50) days for infraction of published rules and regulations;

- C. Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Membership by other provision of these By-Laws, the Articles of Incorporation or the Declaration;
- D. Declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
- E. Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties, and
- F. Grant easements over, across or under the Common Areas for public utilities, ingress, egress and such other purposes as may be deemed advisable by the Board.

Section 7.2 Duties. It shall be the duty of the Board of Directors to:

- A. As more fully provided in the Declaration:
 - 1. Fix the amounts of the annual assessment against each Lot;
 - 2. Send written notice of each assessment against each Lot;
 - 3. Foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same, provided same is cost effective in the sole discretion of the Board of Directors;
- B. Issue, or to cause an appropriate office to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- C. Procure and maintain liability and hazard insurance on property owned by the Association in the amounts required by the Declaration or otherwise determined by the Board of Directors in the sole discretion
- D. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- E. Cause the Common Areas, and any other areas for which the Association is responsible, to be maintained; and
- F. Send the information required by Article XII below to a prospective purchaser of a lot upon receipt of the required notice of pending sale.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 8.1 Enumeration of Offices. The officers of this Association shall consist of a president and vice president, who shall at all times be Members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 8.2 Election and Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner regain, or shall be removed, or otherwise be disqualified to serve.

Section 8.3 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 8.4 Resignation and Removal. Any officer may be removed from office with or without cause by the affirmative vote of a majority of the Board except that any Board Member elected by a minority Member of the Class B Membership may be removed only with the consent of such Class B Member. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make effective.

Section 8.5 Vacancies. A vacancy in any office may be filled by vote of a majority of the Board except that any vacancy created by removal or resignation of a Director elected by a minority member of the Class B Membership may be filled only by such Class B Member. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 8.6 Multiple Offices. The office of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other office except in the case of special offices created pursuant to Section 8.4 of this Article.

Section 8.7 Duties. The duties of the offices are as follows:

- A. PRESIDENT. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.
- B. VICE-PRESIDENT. The vice-president shall act in the place and stead of the president in such event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him or her by the Board.
- C. SECRETARY. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.
- D. TREASURER. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the resolution of the Board of Directors; shall sign all check and promissory notes of the Association; keep proper books of account; cause an annual review of the Association books to be made by a public accountant as the completion of each fiscal year; prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting; and deliver a copy of each to the Members. The Treasurer and President may in writing delegate to a professional management company the authority to execute checks for ordinary and necessary operating expenses of the Association. Capital expenses shall require the signature of the Treasurer and President.

ARTICLE IX

COMMITTEES

The Association shall appoint a Nominating Committee, as provided in these By-Laws, pursuant to the Declaration. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

HEARINGS

General Sanction Hearing. In the event the Board shall exercise its right: 1) to suspend voting rights; 2) to suspend the rights of an Owner on his or her family to use the Common Areas; or 3) to impose any monetary penalty the Board shall first give the sanctioned party written notice of the basis for such sanctions, and the sanctioned party shall be granted an opportunity to be heard by the Board no less than five (5) working days after such notice has been given. The form of such notice and the specific procedures for the hearing shall be determined by the rules and regulations adopted by Board resolution.

ARTICLE XI

ASSESSMENTS

As more fully provided I the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 12 percent (12%) per annum (but not to exceed the maximum rate permitted by Arizona law), and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclosure the lien against the property, and interest costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Areas or abandonment of his Lot.

Lots owned by Declarant and Developer that are not Completed Lots (as defined in the Declaration) are exempt from assessment as provided I the Declaration.

ARTICLE XII

SALE OF LOT BY OWNER/MEMBER

Each Member is required, by the Declaration, to give notice to the Association in writing, not less than ten (10) business days prior to the closing of any sale of such Member's Lot, of the name and address of the purchaser thereof, as well as the scheduled closing date for the sale. The Association shall, upon receipt of such information, mail or otherwise deliver to such purchaser a copy of the declaration, By-Laws, Association Rules, and a statement containing the following information or such other information as is required by law:

- A. The telephone number of a principal contact of the Association, which may be an officer thereof, a management company employed thereby, or any other person;
- B. The amount of the current regular annual assessment, and the amount of any assessments or fees currently owed by the selling Member;
- C. Whether or not any portion of the Lot or Dwelling Unit thereon is covered by insurance maintained by the Association;
- D. Whether the Association knows of any alterations or improvements to the Lot that violate any provision of the Declaration or Association Rules (and, if so, the nature of those violations);
- E. Whether the Association knows of any violation of the health or building codes with respect to the Lot (and, if so, the nature of those violations); and
- F. The case name and number of any pending litigation filed by the Association against the selling Member with respect to the Lot; and the case name and number of any pending litigation filed by the Member against the Association (except that the Association shall not be required to disclose any information protected by the Attorney-client privilege).

ARTICLE XIII

CORPORATE SEAL

The Association shall have a seal in a form approved by the Board.

ARTICLE XIV

AMENDMENTS – CONFLICTS

Section 14.1 These By-Laws may be amended by unanimous vote of the Board of Directors of the Association, subject to amendment or repeal by the vote of not least than three fourths (3/4) of each Class of Members voting at a meeting at which a quorum of members is present, except that if the provisions hereof have been approved by the Federal Housing Administration or by the Veterans Administration, the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B Membership. No amendment may conflict with any right reserved unto the Declaration or Developer.

Section 14.2 In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws or the Articles, the Declaration shall control.

ARTICLE XV

FISCAL YEAR

The fiscal year of the Association shall begin on the first day of January and end on the thirty-first day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE XVI

NOTICE

All notices, demands, statements or other communications required to be given or served under these By-Laws shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by U.S. Mail., postage prepaid or, in the case of a notice pursuant to Section VII, 1B of these By-Laws, registered or certified U.S. Mail, return receipt requested, postage prepaid, (i) if to an Owner, at the address that the Owner shall designate in writing and file with the Secretary or (ii) if the Association, the Board or any manager employed by the Association with respect to management of the Common Areas, at the principal office of the manager or such other address as shall be designated by notice in writing to the Owners, with copies mailed or delivered personally to Declarant and to the Association at its then principal office. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice is addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Lot is owned by more than one (1) person, notice to one (1) of the Owners of the Lot shall constitute notice to all the Owners of the Lot.

IN WITNESS WHEREOF, I have executed these By-Laws this 10th day of November, 2025.

By: 
President

ATTEST:


Secretary