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Attention: Sam Mills

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR  
SIERRA DE OESTE**

Dated: November 14, 2017

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**Dated: November 14, 2017**

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR SIERRA DE OESTE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS is executed this 14<sup>th</sup> day of November, 2017, by Pulte Home Company, LLC, a Michigan limited liability company, the successor by conversion of Pulte Home Corporation, a Michigan Corporation ("**Declarant**").

**RECITALS**

A. Declarant is the owner of land located in the Town of Marana, Pima County, Arizona, described on Exhibit A attached hereto, which is defined herein as the Covered Property and is subject to the terms and provisions hereof.

B. The Covered Property was platted and is sometimes referred to as "Camino de Oeste" but for identification purposes shall be generally known as "Sierra De Oeste." Declarant intends, without obligation, to see that Sierra De Oeste is developed as a planned community.

C. In the course of development, Declarant may record various Tract Declarations or other instruments which shall cover certain portions of the Covered Property to be specified therein.

D. For the purpose of protecting the value, desirability, attractiveness, and character of the Covered Property, Declarant desires and intends that the Covered Property shall be held, sold, and conveyed subject to the provisions hereof, which shall run with all of the Covered Property. This Declaration shall be binding on all parties having any right, title, or interest in the Covered Property, or any part thereof, and shall inure to the benefit of such parties and their successors and assigns.

E. Declarant previously recorded that certain Declaration of Covenants, Conditions, Restrictions and Easements for Camino de Oeste recorded as Instrument No. 20171600114, Official Records of Pima County (the "**Original Declaration**").

F. Pursuant to the provisions of Section 14.2.1 of the Original Declaration, Declarant wishes to amend and restate the Original Declaration in its entirety.

NOW, THEREFORE, Declarant hereby declares, covenants, and agrees as follows:

**ARTICLE I**

**DEFINITIONS**

As used in this Declaration, the following terms shall have following meanings:

1.1 "**Administrative Fee**" shall mean the fee levied by the Board upon transfers as set forth in Section 8.11.3 of this Declaration.

**1.2 "Agency"** shall mean any of the Federal Housing Administration ("FHA"), Veterans Administration ("VA"), Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and any other governmental agency or financial institution insuring or guaranteeing residential loans or purchasing such loans on the secondary market.

**1.3 "Applicable Law"** shall mean any applicable federal, state, or local law, rule, regulation, or ordinance, order, or requirement now or hereafter in effect.

**1.4 "Articles"** shall mean the Articles of Incorporation of the Association, as amended or restated from time to time.

**1.5 "A.R.S."** shall mean Arizona Revised Statutes. Any reference to a specific statute shall refer to the statute as the same may be amended from time to time and shall include any successor statute.

**1.6 "Assessment Lien"** shall mean the charge and continuing servitude and lien against a Lot for payment of Assessments, late charges for delinquent or late payment of Assessments (to the extent permitted by Applicable Law), and reasonable attorneys' fees as further described in Section 8.1 of this Declaration.

**1.7 "Assessment Period"** shall mean each period for which Assessments are to be levied against a Lot pursuant to this Declaration, as more particularly described in Section 8.3 of this Declaration.

**1.8 "Assessments"** shall mean all Regular Assessments, Benefited Assessments, Special Assessments, Working Capital Fund Assessments, and Reserve Fund Assessments, and shall include any charges or fines hereunder which are stated to be secured by the Assessment Lien.

**1.9 "Association"** shall mean "Sierra De Oeste Community Association, an Arizona nonprofit corporation, and its successors and assigns.

**1.10 "Association Rules"** shall mean the rules and regulations adopted by the Board pursuant to Section 6.3 of this Declaration.

**1.11 "Benefited Assessments"** shall mean the Assessments, if any, levied by the Board pursuant to Section 8.7 of this Declaration.

**1.12 "Board"** shall mean the Board of Directors of the Association.

**1.13 "Bylaws"** shall mean the Bylaws of the Association, as amended or restated from time to time. The Bylaws contain the operational procedures of the Association.

**1.14 "Common Area"** shall mean all real property and the Improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled, or operated by the Association within the Covered Property (or by Declarant, if Declarant intends to convey such real property and Improvements or amenities to the Association), including, but not limited to, areas used for landscaping (including, but not limited to, landscape tracts adjacent to public and private rights-of-way as designated on maps of dedication or otherwise), flood control, drainage, slope, bicycle or jogging paths, passive recreational areas, open space, walkways, and pedestrian and vehicular

ingress and egress, or with respect to which the Association has undertaken administrative, maintenance, or other similar responsibilities.

**1.15 "Common Expenses"** shall mean the expenses incurred or to be incurred by the Association, as estimated by the Board, for the benefit of the Members and Owners within the Covered Property, generally, including reasonable reserves, and which are, in the sole and absolute discretion of the Board, determined to be properly chargeable by Assessments to all Owners and Members, as opposed to being allocated solely to certain Lots.

**1.16 "Covered Property"** shall mean: Lots 1 through 144, inclusive, and Common Areas "A" (Open Space) and "B" (Natural Undisturbed Open Space) of Camino De Oeste, as shown on that plat recorded as Sequence No. 2017160012 in the Official Records of Pima County, all subject to the further provisions hereof.

**1.17 "Declarant"** shall mean Pulte Home Company, LLC, a Michigan limited liability company, and any Declarant Affiliate or assignee of the rights and duties granted or reserved to Declarant herein, which assignment may be in whole or in part.

**1.18 "Declarant Affiliate"** shall mean any Person owning any portion of the Covered Property that is directly or indirectly controlling, controlled by, or under common control with Declarant or, if a trust, the beneficiary of Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, corporation, or trust in which Declarant or the beneficiary of Declarant (or another Declarant Affiliate) is a general partner, managing member, controlling shareholder, or beneficiary, and any officers, directors, shareholders, partners, members, managers, trustees, or beneficiaries of Declarant or the beneficiary of Declarant.

**1.19 "Declarant Control Period"** shall mean the earlier of:

**1.19.1** One hundred twenty (120) days after the date when one hundred percent (100%) of the total number of Dwelling Units which are permitted to be built within the Covered Property have had certificates of occupancy (or the equivalent approval) issued and have been conveyed to Persons other than Declarant or a Declarant Affiliate;

**1.19.2** Such date as Declarant relinquishes its rights which may be exercised during the Declarant Control Period; or

**1.19.3** December 31, 2045.

The Declarant Control Period, if expired, shall revive if subsequent events should occur which indicate that the percentage in Section 1.19.1 above no longer exists.

In no event shall the Declarant Control Period continue for more than five (5) years after neither Declarant nor any Declarant Affiliate owns any land within the Covered Property.

**1.20 "Declaration"** shall mean this Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements, as amended, restated, or supplemented from time to time.



**1.21** "Delinquent Amount" shall mean any Assessment, late charge, or installment thereof, or any other sum due hereunder and not paid when due.

**1.22** "Design Review Committee" shall mean the committee(s) formed pursuant to Article IV of this Declaration.

**1.23** "Design Review Guidelines" shall mean the rules and regulations adopted, amended, and supplemented by Declarant and the Design Review Committee pursuant to Section 4.3 of this Declaration.

**1.24** "Development Plan" shall mean the plan or plans maintained in the offices of the Association depicting the plan for future development of portions of the Covered Property. The Development Plan, or any portion thereof, may from time to time be amended at the sole and absolute discretion of Declarant, including for the purpose of conforming to amendments to the zoning for the property covered thereby.

**1.25** "Dwelling Unit" shall mean any building or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

**1.26** "Event of Foreclosure" shall mean the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust, or other encumbrance inferior in priority to an Assessment Lien.

**1.27** "Exempt Property" shall mean portions of the Covered Property not subject to Assessments and with respect to which no voting rights exist, which shall be the following areas now or hereafter located within the Covered Property, unless such property is made subject to assessment in a Tract Declaration:

**1.27.1** All Government Property;

**1.27.2** All Common Area for so long as Declarant or the Association is the owner thereof; and

**1.27.3** All unmanned property owned by a public utility.

**1.28** "Exempt Transfer" shall mean any transfer:

**1.28.1** To the Declarant;

**1.28.2** By a co-Owner to any Person who was a co-Owner immediately prior to such transfer;

**1.28.3** To the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

**1.28.4** To an entity wholly owned by the Owner or to a family trust created by the Owner for the direct benefit of the Owner and his or her spouse and/or heirs at law, provided upon any subsequent transfer of an ownership interest in such entity shall not be an Exempt Transfer;

**1.28.5** To a corporation, limited liability company, partnership, or other entity in which the Owner owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Fund Assessment and Reserve Fund Assessment;

**1.28.6** To an institutional lender as security for the performance of an obligation pursuant to a mortgage or pursuant to a foreclosure sale; or

**1.28.7** To the Association pursuant to a foreclosure sale and resale.

**1.29** "**First Mortgage**" shall mean any mortgage or deed of trust on any Lot or portion thereof, with the first priority over any other mortgage or deed of trust encumbering such Lot or portion thereof.

**1.30** "**First Mortgagee**" shall mean the holder of any First Mortgage.

**1.31** "**Governing Documents**" shall mean this Declaration, Tract Declarations (if any), the Articles of Incorporation, the Bylaws of the Association, the Design Review Guidelines, and the Association Rules, as the same may from time to time be amended.

**1.32** "**Government Property**" shall mean all land and Improvements owned by or dedicated to a public or governmental agency or authority for so long as the public or governmental agency or authority is the owner or beneficiary thereof, except for land or Improvements, or both, owned and/or operated by a public or governmental agency or authority acting in a proprietary capacity.

**1.33** "**Improvement**" shall mean any structure or improvement, including any Dwelling Unit or modification thereof, any patio, outbuilding, pool, wall, path, driveway, excavation, landscaping, fixture, antennae, satellite system, fence, awning, sunshade, flagpole, or other structure or improvement or appurtenance, and including decorative or aesthetic changes, such as color changes or changes to materials.

**1.34** "**Lot**" shall mean an area of real property designated as a "Lot" on any recorded subdivision plat.

**1.35** "**Member**" shall mean any Owner or Person entitled to Membership, including Declarant for so long as Declarant is a Class A or Class B Member and whether or not Declarant owns any Lot.

**1.36** "**Membership**" shall mean the rights and duties of Owners, including Declarant so long as Declarant is a Class A or Class B Member, with respect to the Association.

**1.37** "**Occupant**" shall mean any Person, other than an Owner, occupying a Lot, or any portion thereof or building or structure thereon, as tenant, family member, licensee, or otherwise, other than on a merely transient basis.

**1.38** "**Owner**" shall mean the record holder of legal title to the fee simple interest in any Lot or, in the case of a recorded "contract" (as that term is defined in A.R.S. §33-741(2)), the holder of record of the purchaser's or vendee's interest under said contract, but excluding others who hold such title merely as security, such as any trustee under a deed of trust. An

Owner shall include any Person who holds record title to a Lot in joint ownership or as an undivided fee interest.

**1.39** "Person" shall mean a corporation, partnership, limited liability company, joint venture, individual, trust, or any other legal entity.

**1.40** "Plat" shall mean a recorded plat for the Covered Property and any amendment or resubdivision thereof, and in the event of successive plats of portions of the Covered Property, the term shall include all such plats unless the context clearly indicates otherwise.

**1.41** "Project" shall mean the planned community known as Sierra De Oeste to be developed on the Covered Property.

**1.42** "Regular Assessments" shall mean the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.

**1.43** "Reserve Fund Assessment" shall mean an amount determined by the Board from time to time pursuant to Section 8.11.2, not to exceed the product of one hundred percent (100%) of the then-current annual Regular Assessment attributable to the Lot multiplied by one-sixth (1/6<sup>th</sup>).

**1.44** "Retail Purchaser" shall mean a Person who purchases a Lot in a retail transaction, and shall not include Declarant, any Declarant Affiliate, or any other Person who acquires a Lot (i) in a bulk sale transaction for purposes of resale or (ii) by distribution (as distinguished from purchase).

**1.45** "Reviewing Authority" shall mean the Person or entity entitled to exercise approval over architectural, landscape, and other matters pursuant to Section 4.2 below.

**1.46** "Shortfall" as defined in Section 8.13 of this Declaration.

**1.47** "Single Family" shall mean a group of persons related by blood, marriage, or legal adoption, or a group of not more than three (3) unrelated persons maintaining a common household. "Single Family" use shall not include any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home, whether or not providing services to Occupants, except that this exclusion shall not apply to group homes or similar living or care arrangements which by Applicable Law may not be prohibited by enforcement of private restrictive covenants.

**1.48** "Special Assessments" shall mean the assessments, if any, levied by the Board pursuant to Section 8.6 of this Declaration.

**1.49** "Special Use Fees" shall mean any fees charged by the Association for use of the Common Area pursuant to Section 3.1.2 of this Declaration. Special Use Fees which are charged annually and billed by invoice may be treated the same as Assessments for all purposes hereof.

**1.50** "Town" shall mean the Town of Marana, Arizona.

**1.51** "Tract Declaration" shall mean any declaration of covenants, conditions, and restrictions or like declaration recorded after the recording of this Declaration and pertaining to



any portion of the Covered Property, which shall in all cases be consistent with and subordinate to this Declaration.

**1.52** "Use Restrictions" shall mean the use restrictions attached as Exhibit B, as they may be modified, canceled, limited, or expanded under Article V.

**1.53** "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be reasonably visible to a Person six feet (6') tall, standing at ground level on neighboring property (either Lots or Common Area) six feet (6') back from the property line of the neighboring property. The Design Review Committee shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the determination of the Design Review Committee shall be binding in that regard, subject to any appeal rights to the Board.

**1.54** "Voting Member" shall mean each Class A Member and, to the extent the Class B Member has voting rights pursuant to Section 7.5.2, the Class B Member.

**1.55** "Working Capital Fund Assessment" shall mean an amount determined by the Board from time to time pursuant to Section 8.11.1, not to exceed the product of one hundred percent (100%) of the then-current annual Regular Assessment multiplied by one-sixth (1/6<sup>th</sup>).

## ARTICLE II

### PROPERTY AND PERSONS BOUND BY THIS DECLARATION

**2.1** General Declaration. Declarant desires to facilitate development of the Covered Property in accordance with the Development Plan, as may be amended from time to time in the sole and absolute discretion of Declarant. Though the Development Plan has in good faith been created and adopted by Declarant as the initial plan for the Covered Property, such plans may change, and nothing in this Declaration or in any other instrument shall be deemed a representation or warranty that land shall be developed as shown in the Development Plan or that such plan may not materially be revised or changed at Declarant's discretion and in accordance with such Applicable Laws as may from time to time exist.

As portions of the Covered Property are developed, Declarant, without obligation, may record one (1) or more Tract Declarations designating Common Area, and may establish such additional covenants, conditions, and restrictions as may be appropriate for the respective portions of the Covered Property. Nothing in this Declaration or in any Tract Declaration shall be construed to prevent or limit Declarant's right to modify any part of the Development Plan, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot or Common Area.

**2.2** Owners and Occupants Bound. Upon the recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Lot to or from such owners or Occupants.

## ARTICLE III

### EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREA

**3.1 Easements and Rights of Enjoyment.** Subject to the provisions of Section 3.13, each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to each Owner's Lot. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Area so long as they remain Occupants. The foregoing grants and rights are subject to the following limitations, in addition to all other limitations and reserved powers set forth in this Declaration:

**3.1.1 Right to Modify and Change.** The rights, duties, and obligations of the Association, and the reserved right of Declarant and of the Association, to modify the use of Common Area or to convey same free of claims or rights of the Owners or Members;

**3.1.2 Special Use Fees.** The right of the Association pursuant to this Declaration to charge reasonable Special Use Fees for the use of the Common Area. Any such Special Use Fees shall be set by the Board from time to time, in its sole discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those Common Areas selected by the Board to be subject to a Special Use Fee, and shall be intended to collect revenue from the actual users of such selected Common Area so that all of the costs of operating such selected Common Area are not borne by all of the Owners through Regular Assessments, but rather are borne, at least in part, by the Owners, Occupants, and other persons utilizing such selected Common Area;

**3.1.3 Suspension of Rights.** The right of the Association, after such notice and hearing as may be required by law, to suspend the voting rights and the rights of use and enjoyment of the Common Area of any Owner or Occupant, as the case may be, for any period during which an Assessment remains delinquent, or for a period not to exceed sixty (60) days for any single infraction of this Declaration, a recorded Tract Declaration, the Association Rules, or the Design Review Guidelines (provided such suspension may be continued if the infraction remains uncured);

**3.1.4 Limitation of Guests.** The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Area; and

**3.1.5 Regulation, Mortgages and Conveyances; Power of Association.** The right of the Association to regulate use of the Common Area in accordance with this Declaration, and to mortgage or convey portions of Common Area with the affirmative vote or written consent, with or without a meeting, of Declarant and Voting Members representing at least two-thirds (2/3) of the total votes allocable to Lots.

Notwithstanding the foregoing, the Association may at any time convey portions of the Common Area, including areas impacted by encroachment areas, boundary line discrepancies, survey errors, and other such matters, and portions of Common Area determined by Declarant to be more burdensome or costly to own than the accompanying benefit to the Association would warrant, and such conveyance may be made without the consent or vote of any other Person or Member, should Declarant or the Board determine that such conveyance or transfer is in the best interests of the Association or Covered Property. Furthermore, Declarant

may at any time re-subdivide Common Area into Lots or other Common Area or dedicated land, and may cause the Board or Association to execute such instruments as may be necessary to cause such re-subdivision or dedication, and no consent or approval shall be required of any other Members nor shall a meeting of Members be required. Any sale, disposition, or re-subdivision of the Common Area shall serve to extinguish any rights or interests therein of Owners pursuant to the provisions hereof.

In addition, the Association shall in all cases have the right to convey and dedicate lands and interests such as public roads, streets, slopes, drainageways, culverts, parks, sewer facilities, and other Common Area, and such action shall not require the approval of any Owners or Members of the Association.

**3.2 Delegation of Use.** Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his or her rights of use and enjoyment in the Common Area to the members of his or her family or his or her Occupants, or guests subject to the limitations set forth herein and in the Association Rules, and in the event of such delegation, including any lease of a Lot, the Owner shall be deemed to have relinquished his or her right of use and enjoyment for the period of such lease or delegation. Without limitation, the Association Rules may limit the number of guests, prescribe restrictions on certain types of gatherings or events, and impose Special Use Fees for certain gatherings or events.

**3.3 Waiver of Use.** No Owner shall be exempt from personal liability for Assessments nor shall any Owner have any right to release a Lot from the liens or charges arising under this Declaration or any Tract Declaration by waiver of the right of use and enjoyment of Common Area or for any other reason, and no Owner shall in any fashion or by any means have a right of set-off of claims against any sum owed to the Association.

**3.4 Acceptance of Certain Common Area and Other Areas.** Declarant may convey to the Association improved or unimproved real estate located within the Covered Property, personal property, and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed, including, but not limited to, restrictions governing the use or maintenance of such property. Future Common Area to be accepted may include, but shall not be limited to, recreational features, sports court or field, parks, open spaces, and other areas or facilities, but no representation or warranty is made as to whether or not any such features or facilities shall be offered or included in the Covered Property. It is acknowledged that should a future feature, such as a recreational amenity, be included within the Common Area, the Association shall have the right to increase Assessments by the maximum amount permitted by law to assure adequate funds, and shall further have the right to impose a Special Assessment during such initial fiscal years as may be necessary due to limitations upon increases in the Regular Assessment.

**3.5 Utility Easement.** There is hereby created an easement upon, across, over, and under the Common Area for the benefit of Declarant and its contractors and the utility companies providing utility service to the Project for reasonable ingress, egress, installation, replacing, repairing, or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, high speed internet, 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 Area, but no sewers, electrical lines, water lines, cable or

high speed internet lines, or other utility or service lines shall be installed or located on the Common Area except as designed, approved, and constructed by Declarant or as otherwise approved by the Board.

**3.6 Declarant's Use for Sales and Leasing Purposes.** Declarant shall have the right and an easement to maintain sales or leasing offices, model homes, management offices, a design center, and parking areas for the purpose of accommodating Persons visiting such model homes and sales offices throughout the Covered Property, and to maintain advertising, identification, or directional signs on the Common Area. Declarant reserves the right to (i) place management offices, sales and leasing offices, model homes, and parking areas on any portion of the Common Area in such number, of such size, and in such locations as Declarant deems appropriate; and (ii) use any recreational facilities within the Project for management and sales activities. The rights granted to Declarant pursuant to this Section shall survive the expiration or termination of the Declarant Control Period.

**3.7 Declarant's Easements.** Declarant shall have the right and an easement on and over the Common Area to construct all Improvements that Declarant may deem necessary and to use the Common Area or other portions of the Covered 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. Declarant shall have the right and an easement upon, over, and through the Common Area as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by Declarant by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

**3.8 Easement in Favor of Association.** The Lots (except for the interior of a Dwelling Unit or other buildings) are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees, and independent contractors:

**3.8.1** For inspection of the Lots in order to verify the performance by Owners, their guests, and the other Occupants of a Lot of all items of maintenance and repair for which they are responsible;

**3.8.2** For inspection, maintenance, repair, and replacement of the Common Area reasonably accessible only from such Lots;

**3.8.3** For correction of emergency conditions in, under, upon, or over one or more Lots; and

**3.8.4** For inspection, maintenance, repair, and replacement of walls and fences which the Association is obligated to maintain.

**3.9 Easements for Encroachments.** Each Lot, the Common Areas, and all other areas in Sierra De Oeste shall be subject to a non-exclusive easement of not more than eighteen inches (18") for encroachments of walls, ledges, roofs, and other structures created by construction, settling, and overhangs as originally designed and constructed by the Declarant or other developer. If any such improvement on the Common Areas encroaches upon any Lot or other area, or if any such improvement on any Lot or other area encroaches upon any portion of the Common Areas, or if any such improvement on any Lot or other area encroaches upon another Lot or other area, a valid non-exclusive easement for said encroachments and for the



maintenance thereof shall exist. In the event any structure on any Lot, Common Area, or other area is repaired, altered, or reconstructed in accordance with the original plans and specifications, similar encroachments and easements for the maintenance thereof shall exist. Notwithstanding anything contained in this Section to the contrary, there shall be a non-exclusive easement of not more than forty-two inches (42") on any Lot with a boundary adjacent to any perimeter wall of the community for the encroachment of such perimeter wall and for the maintenance and repair thereof.

**3.10 Easements for Utilities.** Each Lot and the Common Areas shall be subject to a ten foot (10') public utility easement as set forth on the Plat, which easement shall be for the benefit of Declarant and its contractors, the utility companies providing utility service to the Project, and other portions of the Covered Property and the Annexable Property.

**3.11 Vehicular No Access Easements.** Certain Lots and Common Area shall be subject to a one foot (1') vehicular no access easement as set forth on the Plat.

**3.12 Natural Open Space.** Common Area "B" is intended to be maintained as natural open space. Common Area "B" shall remain undisturbed. Prohibited disturbance of Common Area "B" includes, without limitation, secondary impacts such as the presence of livestock, fencing, intensive landscaping, and outdoor play areas.

## ARTICLE IV

### DESIGN RESTRICTIONS AND CONTROL

#### 4.1 Obligation to Obtain Approval.

**4.1.1 Mandatory Submittal of Plans and Specifications.** Except as otherwise expressly provided in this Declaration, the Design Review Guidelines, or any applicable Tract Declaration, without the prior written approval by the Reviewing Authority of plans and specifications submitted in accordance with the provisions of this Declaration and, if applicable, the Design Review Guidelines:

(a) No Improvements, alterations, repairs, excavation, grading, landscaping, or other work shall be done which in any way alters the exterior appearance of the Covered Property or Improvements thereon from their natural or improved state;

(b) No building, fence, exterior wall, pool, roadway, driveway, or other Improvement or grading shall at any time be commenced, erected, maintained, altered, changed, or made on any Lot; and

(c) No exterior trees, bushes, shrubs, plants, or other landscaping shall be planted or placed upon the Covered Property, except for replacements of plants previously approved and which remain acceptable in accordance with the then-current Design Review Guidelines, if applicable.

**4.1.2 Changes or Deviations.** Once approved by the Reviewing Authority, no material changes or deviations in or from the plans and specifications shall be permitted without approval of the change or deviation by the Reviewing Authority.

**4.1.3 Verbal Statements.** In no event shall the Reviewing Authority be bound by any verbal statements, and no single member of the Design Review Committee shall have the authority to bind the Design Review Committee.

#### **4.2 Reviewing Authority for Design Review Matters.**

**4.2.1 Broad Reserved Rights of Declarant.** Each and every Owner, by accepting a deed or otherwise having ownership, possession, or control over any Lot, agrees that Declarant, as the initial entity planning for the development of the Covered Property, and as an initial Owner of all or portions of the Covered Property, has a legitimate interest in seeing that the Covered Property is developed in a manner consistent with Declarant's overall Development Plan, as that plan may be changed from time to time. Accordingly, Declarant shall have the right to exercise all approval rights pursuant to this Article IV, which approvals may be granted or denied in the sole and absolute discretion of Declarant. Declarant's rights under this Article IV shall not terminate upon the expiration of the Declarant Control Period, but shall last for the Declarant Control Period or for so long as Declarant owns any portion of the Covered Property, whichever period shall last expire. In exercising its rights hereunder, Declarant shall be deemed to be acting as an agent and committee of the Association.

**4.2.2 Delegation by Declarant.** Declarant may delegate all or a portion of its reserved rights under this Section to either or both of: (a) the Design Review Committee or (b) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association, although Declarant may retain certain rights of review and approval and may also delegate certain of its rights of review and approval to others. Certain portions of the Covered Property may be treated differently for purposes of design review and may, at Declarant's discretion, be under the control solely of Declarant or, for example and without limitation, a committee separate from that which reviews Lots. Further, Declarant may, without limitation, elect to delegate all responsibility for review and approval of alterations and modifications to construction and landscaping to the Design Review Committee. Upon any delegation, Declarant shall be fully released of all obligation, right, and responsibility with respect to the functions of the Reviewing Authority so delegated. The Reviewing Authority shall at all times be deemed to be acting as an agent and committee of the Association.

**4.2.3 Reviewing Authority.** Declarant or any Person or entity, including the Design Review Committee, delegating the power and authority to review and approve applications or submittals may, according to the context, be referred to herein as the "Reviewing Authority." In any case in which Declarant has retained rights as the Reviewing Authority and has not assigned or delegated rights of review and approval, the Association shall nevertheless, with Declarant's approval, have full rights of enforcement of the provisions hereof and may take legal and other action against any Owner or other Person, or its agents, contractors, and subcontractors, who may be in violation of the provisions hereof or of the Design Review Guidelines or who may have acted without approval of the Reviewing Authority.

#### **4.3 Design Review Guidelines**

**4.3.1 Content of Design Review Guidelines.** The initial Design Review Guidelines may be adopted by Declarant or by the Design Review Committee with the approval of Declarant and the Board. Subject to the written approval of the contents thereof by Declarant for so long as Declarant owns any portion of the Covered Property, and thereafter subject to the written approval of the Reviewing Authority, the Design Review Committee may adopt, amend,

and supplement the Design Review Guidelines. The right of the Declarant to approve the Design Review Guidelines is paramount to the right of the Board or any Reviewing Authority other than Declarant, and no amendment may be made without Declarant's consent so long as Declarant owns any portion of the Covered Property. The Design Review Guidelines shall interpret, implement, and supplement this Declaration and shall set forth procedures for review and the standards for development within all or various portions of the Covered Property. The Design Review Guidelines may include, without limitation, provisions regarding:

- (a) The size or maximum Lot coverage for Single Family Dwelling Units;
- (b) Architectural design, with particular regard to the harmony of the design with surrounding structures and topography;
- (c) Placement of buildings;
- (d) Landscaping design, content, and conformity with the character of Sierra De Oeste;
- (e) Requirements concerning exterior color schemes, exterior finishes and materials, and requirements concerning yard and building ornaments (Visible From Neighboring Property), recreational equipment, exterior lighting, and exterior furniture (Visible From Neighboring Property), and other items or Improvements that are Visible From Neighboring Property;
- (f) Signage and mailboxes; and
- (g) Perimeter and screen wall design and appearance.

**4.3.2 Force and Effect.** The Design Review Guidelines shall have the same force and effect as the Association Rules.

**4.4 Design Review Committee.** The Design Review Committee shall be a committee of the Board. All members of the Design Review Committee, and all persons acting on behalf of the Reviewing Authority, shall be appointed and removed solely by Declarant so long as Declarant is a Member of the Association, unless such right is waived in writing by Declarant. A member of the Design Review Committee shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent, or employee of Declarant.

**4.5 Waiver and Variance.** The Reviewing Authority may grant variances and waivers from the requirements of the Design Review Guidelines if it believes it is in the best interests of the Covered Property to do so, or if hardship justifies the variance. Any waiver or variance must be specifically applied for in writing, specifying the specific waiver or variance requested. Approval of any plans, drawings, or specifications that do not specifically identify a variation or deviation from the Design Review Guidelines shall not constitute an implied or other approval of a waiver or variance. Approval of any waiver or variance or of any plans, drawings, or specifications that set forth a waiver or variance, or for any other matter requiring the approval of the Reviewing Authority, shall not be deemed to constitute a waiver of any right to withhold approval of any similar waiver, variance, plan, drawing, specification, or matter subsequently submitted for approval.

No application or approval shall be required for any Improvement to be made within the Covered Property by Declarant, Declarant Affiliates, or their authorized agents or representatives.

**4.6 Liability.** Neither the Reviewing Authority (nor, if applicable, any member thereof), Declarant, nor Declarant Affiliates shall be liable to the Association, any Owner, or any other party for any damage, loss, or prejudice suffered or claimed on account of:

The approval or disapproval of any plans, drawings, or specifications, whether or not defective;

**4.6.1** The construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications;

**4.6.2** The development of any Lot;

**4.6.3** The execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member of the Design Review Committee, such member has acted in good faith on the basis of such information as may be possessed by him or her; or

**4.6.4** Any delay resulting from the review or approval process.

Without in any way limiting the generality of any of the foregoing provisions of this Section, the Reviewing Authority, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted for review.

**4.7 Appeal to Board.** Any Owner who initially made application to any Reviewing Authority other than Declarant or the Board, and who is aggrieved by a decision of any Reviewing Authority other than Declarant or the Board, may appeal the decision to the Board in accordance with procedures to be established in the Design Review Guidelines. In the event the decision of any Reviewing Authority other than Declarant or the Board is overruled by the Board on any issue or question, the prior decision of such Reviewing Authority shall be deemed modified to the extent specified by the Board. There shall be no appeal from a decision of the Reviewing Authority, and no appeal from a decision of the Reviewing Authority may be taken so long as Declarant has the right to appoint the members of the Design Review Committee.

**4.8 Fees.**

**4.8.1 Power to Assess Fees.** The Reviewing Authority may establish a reasonable processing fee to defer the costs in considering any requests for approvals submitted to the Reviewing Authority or for appeals to the Board, which fee shall be paid at the time the request for approval or review is properly submitted.

**4.8.2 Refundable and Non-Refundable Fees and Deposits.** In addition, the Reviewing Authority may implement: (a) refundable and non-refundable fees and deposits for revegetation and restoration of any site, with a portion of a fee being non-refundable should an Owner default in its obligations to restore or revegetate a site when required hereunder or by the Design Review Guidelines, or should the Association or Reviewing Authority incur cost as a result thereof; (b) refundable and non-refundable fees to assure that all damage or degradation



to Common Area, streets, and roads caused or to be caused by construction traffic is promptly repaired or otherwise addressed by the Owner responsible therefor, or to enable the Association to accomplish such work itself, or to establish a fund for future restoration of such areas; and (c) such deposits as may be appropriate to assure completion of components of any work that may interrupt or interfere with the use of Common Area or operations of the Association.

**4.9 Inspection.** The Reviewing Authority or authorized consultant of the Reviewing Authority, or any authorized officer, director, employee, or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot, after reasonable notice to the Owner of such Lot, in order to inspect the Improvements constructed or being constructed on such Lot to ascertain that such Improvements have been, or are being, built in compliance with the approval of the Reviewing Authority, the Design Review Guidelines, this Declaration, and any applicable Tract Declaration.

## ARTICLE V

### PERMITTED USES AND RESTRICTIONS

**5.1 Tract Declarations.** Except with respect to Covered Property owned by Declarant, no Tract Declaration or further covenants, conditions, restrictions, or easements, or any amendments or modifications thereto, shall be recorded against any Lot without the prior written approval of Declarant or, following the expiration of the Declarant Control Period, of the Board, and without such approval such Tract Declaration or further covenants, conditions, restrictions, and easements, or any amendments or modifications thereto, shall at Declarant's option be deemed null and void. All Tract Declarations or other recorded covenants, conditions, or restrictions, or any amendments or modifications thereto, shall be consistent with and subordinate to this Declaration and shall contain such provisions as Declarant or the Board shall reasonably require.

### **5.2 Use Restrictions.**

Declarant has established a general plan of development for the Covered Property as a planned community in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Covered Property, and the vitality of and sense of community within the Covered Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the Project. The Covered Property is subject to the land development, architectural, and design provisions described in Article IV, the other provisions of this Declaration governing individual conduct, and uses of or actions upon the Covered Property, and the initial Use Restrictions, as each may be amended from time to time, all of which establish affirmative and negative covenants, easements, and restrictions on the Covered Property. The Association shall provide, without cost, a copy of the Use Restrictions and Association Rules then in effect to any requesting Member.

During the Declarant Control Period, Declarant may amend, modify, cancel, limit, create exceptions to, or expand the Use Restrictions. Thereafter, the Board may amend, modify, cancel, limit, create exceptions to, or expand the Use Restrictions provided that any such action may be nullified by the affirmative vote of Owners representing at least sixty-seven percent (67%) of the total Class A votes entitled to be cast by the membership. At least thirty

(30) days prior to the effective date of any such action taken by the Board, a copy of the amendment or rule specifying the effective date shall be posted in a prominent place within the Covered Property or delivered to the Members. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. In addition to posting or delivering the amendment or rule, if such amendment or rule modifies, cancels, limits, creates exceptions to, or expands the Use Restrictions, the Association shall record an amendment to this Declaration setting forth the amendment or rule.

Nothing in this Article shall authorize the Board to modify, repeal, or expand the Declaration (with the exception of the Use Restrictions). This Declaration may be amended only as provided herein.

**5.3 Party Walls.** Except as hereinafter provided, the rights and duties of Owners of contiguous Lots which have shared walls or fences ("**Party Walls**") shall be as follows:

**5.3.1** Each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof. Notwithstanding the foregoing, no Owner may remove a Party Wall or make structural or design changes to a Party Wall without approval from the Reviewing Authority and obtaining the approval of all Owners of affected Lots

**5.3.2** If a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, or guests, the Owner shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided in Section 5.3.4 below.

**5.3.3** In the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, or guests, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots on the damaged or destroyed Party Wall.

**5.3.4** In the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Reviewing Authority; whose decision shall be binding unless such decision may be appealed to the Board, in which event the Board's decision shall be binding and final.

**5.3.5** In the case of Party Walls between Common Area and Lots, the Association, as the owner of the Common Area on which a Party Wall is located, shall have the rights and obligations of an Owner of a Lot as set forth in Sections 5.3.1, 5.3.2, and 5.3.3.

**5.4 Perimeter Walls and View Fencing.**

**5.4.1** Notwithstanding anything in Section 5.3 to the contrary, and unless otherwise agreed in writing by the Association and any affected Owner, in the case of walls or fences on the exterior perimeter boundaries of Sierra de Oeste or interior perimeter boundaries of Lots facing Common Area ("**Perimeter Walls**"), the Association will repair and repaint the exterior surface of the Perimeter Walls which face the Common Area or outside of Sierra de Oeste, and the Owner will be responsible for repairing and repainting that portion which faces

into the Lot. In addition, the Association shall maintain and repair any wrought iron view fencing, whether it be a Party Wall or a Perimeter Wall.

**5.4.2** Owners shall be responsible for the landscaping located on their Lots inside the Perimeter Walls and view fencing, and Owners shall maintain the landscaping in a manner so as not to grow over, under, or through a perimeter wall or view fencing. Owners shall not allow landscaping to impede or otherwise interfere with the maintenance and repair of a Perimeter Wall or view fencing. The Association shall be responsible for maintaining the landscaping located on Lots exterior to the Perimeter Walls and view fencing.

**5.5 Permissible Encroachments.** To the extent that any Improvement upon a Lot or Common Area that was constructed on the Covered Property as part of the original construction by Declarant encroaches on any other Lot or Common Area as a result of unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon or any other reason other than the intentional encroachment on a Lot or Common Area, a valid easement for the encroachment, and for the maintenance thereof, exists to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary.

**5.6 Restriction on Further Subdivision, Property Restrictions and Rezoning.**

So long as Declarant is a Member of the Association, all subdivision Plats and Tract Declarations must be submitted to and approved by Declarant before being recorded or approved by the Town, as applicable. Except for property owned by Declarant, after a subdivision Plat has been approved, no Lot or any portion of a Lot shall be further subdivided, and no portion less than all of the Lot shall be conveyed or transferred by any Owner without the prior written approval of Declarant. The combining of a Lot or Common Area with an adjacent Lot or Common Area, where no additional Lot is created and which is approved by the Reviewing Authority, shall not be deemed a re-subdivision in accordance with the foregoing requirements.

No proposed application for rezoning, variance, or use permit for any portion of the Covered Property shall be made, filed, submitted to, or recorded with the Town or any other governmental authority or agency unless it has first been approved by Declarant so long as Declarant is a Member of the Association.

This Section 5.5 shall not apply to portions of the Covered Property owned by Declarant or to subdivision Plats or Tract Declarations submitted or proposed by Declarant and pertaining to portions of the Covered Property owned by Declarant. Further, Declarant reserves the absolute right, without any other consent or approval, to resubdivide and change the use of any portion of the Covered Property, including any Common Area, Lots, and may cause the Board or the Association to execute such instruments as may be necessary to accomplish same.

Declarant may at any time in writing relinquish all or a portion of its approval rights under this Section 5.5. After Declarant is no longer a Member of the Association, or after Declarant may have relinquished its rights under this Section, the Board shall succeed to the right to approve of subdivision Plats or Tract Declarations.

**5.7 Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the construction, installation, or maintenance by Declarant or a Declarant

Affiliate or their agents during the period of development and construction on the Covered Property of Improvements, landscaping, or signs deemed necessary or appropriate by Declarant or a Declarant Affiliate, in its sole discretion, to the development or sale of property within the Covered Property.

**5.8 Savings Clause.** The provisions of this Declaration, including, but not limited to, the Use Restrictions, shall be construed to be consistent with Applicable Laws and, should any provision violate Applicable Law, then Applicable Law shall govern. Without limitation, no provision hereof shall be construed to prohibit the placement of solar heating or other such devices or antennae on Lots, provided such placement conforms to any provisions of this Declaration, the Design Review Guidelines, or the Association Rules which do not conflict with Applicable Laws, nor shall the provisions hereof prohibit the placement of the American Flag or the parking of public service vehicles as permitted by Applicable Law, subject to the Design Review Guidelines and Association Rules not in conflict with such Applicable Laws.

## ARTICLE VI

### ORGANIZATION OF ASSOCIATION

**6.1 General Purpose and Charge.** The Association is a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by Applicable Law and set forth in the Governing Documents. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

**6.2 Board of Directors and Officers.** The affairs of the Association shall be managed and conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During the Declarant Control Period, the directors of the Association shall be appointed by and may be removed solely by Declarant. After the Declarant Control Period, or at such earlier time as Declarant relinquishes its rights to appoint the Board, directors shall be elected by the Members in accordance with the Articles and Bylaws. Unless the Governing Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by the Declarant to the Class A Members. The Board may appoint or engage a managing agent to be responsible for the day-to-day operation of the Association and the Common Area. The Board shall determine the compensation, if any, to be paid to the managing agent.

**6.3 Association Rules.** By a majority vote of the Board, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area; provided, however, that the Association Rules shall not discriminate among Owners and Occupants, except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property and the Common Area. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein, and may be enforced in the same manner as the provisions of



this Declaration. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association during normal business hours. During the period while the Class B Membership continues to exist, the Class B Member may disapprove of actions of the Board to adopt, amend or repeal the Association Rules.

**6.4 Personal Liability.** Neither the Association nor any Reviewing Authority, Board member, officer, committee member, employee, managing agent, or representative of the Association shall be personally liable to any Owner, Occupant, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors, or negligence; provided, however, that the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

**6.5 Mergers or Consolidations.** The Association shall have the right, power, and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association.

## ARTICLE VII

### MEMBERSHIPS AND VOTING

**7.1 Votes of Owners.** Every Owner of a Lot (other than an Owner who owns solely Exempt Property), and Declarant, so long as it is a Class B or Class A Member, shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues or, in the case of Declarant, so long as it owns any Lot or retains a Class A or Class B Membership. Each Class A Member shall have one (1) vote for each Lot owned.

**7.2 Membership Appurtenant to Ownership.** Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable, except that Declarant shall be a Member of the Association for so long as it possesses either a Class B or Class A Membership, unless Declarant shall earlier relinquish its Membership. There shall be only the Memberships for each Lot as are described herein. Joint ownership or ownership of undivided interests in any property as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot. Rather, the votes must be cast together in one (1) unit.

**7.3 Declarant.** Declarant shall be a Member of the Association for so long as it holds a Class A or Class B Membership.

**7.4 Classes.** The Association shall have two (2) classes of Members:

**7.4.1 Class A.** Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1.

**7.4.2 Class B.** The Class B Member shall be Declarant. The Class B Membership shall terminate and be converted to a Class A Membership two (2) years after

expiration of the Declarant Control Period or at such earlier time as Declarant may relinquish its Class B Membership.

Declarant shall have the right to assign its rights and privileges as Declarant and as the Class B Member in whole or in part. Such assignment may include all special voting rights and other rights and privileges set forth herein.

Upon termination of the Class B Membership, Declarant shall be a Class A Member entitled to the Class A votes attributable to all Lots which it owns. Should the Class B Membership not have expired, Declarant shall retain its Class B Membership even if Declarant owns no Lot.

**7.5 Control by Declarant; Rights of the Class B Member; Votes by Class B Member.**

**7.5.1** Declarant, as the Class B Member, has the right to control the Association. Such control shall exist by virtue of the right, at all times during the Declarant Control Period, to appoint Directors of the Association as well as their replacements in the event of death, removal, resignation, or otherwise. Additionally, continuing even after expiration of the Declarant Control Period, the Class B Member may amend this Declaration, amend the Articles and Bylaws of the Association, appoint the Design Review Committee, and veto amendments proposed to be made by the Class A Members. The Class B Member and Declarant shall have such additional and other rights and powers as are set forth herein or in other Governing Documents, including the right to disapprove of actions of the Board.

**7.5.2** In addition to Declarant's right to control the Association as set forth in Section 7.5.1, for any action of the Association which, to be effective, Applicable Law mandates the approval of a specified percentage of Members or votes of Owners must be obtained, it shall be presumed that the Class B Member has three (3) memberships for each Lot then owned by Declarant, and three (3) votes for each Lot then owned by Declarant.

**7.6 Right to Vote.** In the event a Lot is owned by more than one (1) Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot unless objection is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot all such votes shall be deemed void. The vote for each Member must be cast as a single unit and solely by the Voting Member as and when applicable. Fractional votes shall not be allowed.

**7.7 Transfer of Membership.** The rights, duties, and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed, or alienated in any way, except upon transfer of ownership of such Class A Member's Lot and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Applicable Law. Any attempt to make a non-approved form of transfer shall be void. Any transfer of ownership in a Lot shall operate to transfer the Membership appurtenant to ownership to the new Owner. However, no change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence of such change (e.g., a recorded deed showing the name of the Owner of such Lot).

## ARTICLE VIII

### ASSESSMENTS AND CREATION OF LIEN

**8.1 Creation of Assessment Lien; Personal Obligation of Lot Owner.** Each Owner by acceptance of a deed for any Lot (whether or not it should be so expressed in any such deed or any other instrument) is deemed to covenant and agree to pay to the Association the Assessments and Special Use Fees when due. The amount and time for payment of the Assessments and Special Use Fees shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Assessments and Special Use Fees, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate.

Assessments, together with interest thereon and late charges and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot at the time when such Assessments become due and payable. Notwithstanding the provisions of this Declaration, the extent of any lien of the Association shall be subject to such provisions as are established at law or in equity, including such limitations as are established and imposed by A.R.S. §33-1807 or any successor statute.

**8.2 Regular Assessments.** The Association by and through the Board shall determine and levy the Regular Assessments for the purposes set forth in this Declaration. The Regular Assessments levied by the Association shall be used to accomplish the duties and purposes of the Association within the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Area, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. The Regular Assessments shall take into account the Common Expenses of the Association benefiting all Lots.

Subject to the limitations hereof, the Board may, during any Assessment Period, revise the amount of the Regular Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Regular Assessment in accordance with the provisions hereof.

**8.3 Assessment Period.** Except as otherwise provided in this Declaration, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period to monthly or quarterly assessments or to any other assessments deemed appropriate by the Board. Assessments shall commence upon initial conveyance to any Person other than Declarant or to a Declarant Affiliate. The Regular Assessments shall be prorated for the initial Assessment Period.

If any installment permitted for the payment of Assessments is not paid when due, the Board, at its option, may accelerate the entire Regular Assessment or other Assessment. Late fees and interest may be added to the Delinquent Amount of any Assessment, as provided herein, and become a part thereof, and may continue to accrue

interest thereon, all to the extent permitted by Applicable Law. Delinquent payments shall, to the extent permitted by Applicable Law, apply first to the principal amount of any delinquent Assessments, then to accrued interest, and then to late fees and other sums due. The Owner shall also be liable for attorneys' fees and legal costs, including litigation related expenses and expert witness fees, if any. Attorneys' fees and costs incurred shall to the extent permitted by Applicable Law be deemed a part of the delinquent Assessment, and shall be secured by the lien therefor.

**8.4 Association's Rights in Spending Funds from Year to Year.** The Association shall not be obligated to spend in any year all monies received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Regular Assessment in the succeeding year if a surplus exists from a prior year. The Association shall be under no obligation to refund any surplus balance and may transfer surpluses to the reserve account or any other account at the Board's discretion.

**8.5 Rate of Assessment.** The amount of the Regular Assessments, Benefited Assessments, and Special Assessments shall be established by the Board, in its sole discretion.

**8.6 Special Assessments.** In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of:

**8.6.1** Constructing or repairing Improvements to Common Area;

**8.6.2** Correcting an inadequacy in the Association's accounts;

**8.6.3** Defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital Improvement owned by the Association; or

**8.6.4** Defraying other extraordinary expenses or paying other expenses the Board may deem appropriate, including increased expenses encountered by the Association in connection with new or expanded Common Area amenities or features.

The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Prior to expiration of the Declarant Control Period, Special Assessments shall be approved by Declarant. Following the expiration of the Declarant Control Period, Special Assessments shall be approved by the written consent, or vote at any annual or special meeting, of Voting Members representing a majority of all votes allocable to Lots. The Board may in any case, however, impose and assess a Special Assessment as to all Lots, without any vote or consent of Members whatsoever if the purpose is to pay the increased costs and expenses of the Association in connection with new Common Area, amenities, or features, and Declarant shall have the right to cause the Board to make and levy such Special Assessments.

**8.7 Benefited Assessments.** The Board may levy Benefited Assessments against a Lot or particular Lots for expenses incurred or to be incurred by the Association, as follows:

**8.7.1** To cover the costs of maintenance of easements and property that benefit certain Lots but not all of the Covered Property;

**8.7.2** To cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot, or groups of Lots, or Occupants thereof upon



request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, caretaker service, etc.), which assessments may be levied in advance of the provision of the requested benefit, item, or serve as a deposit against charges to be incurred by the Owner;

**8.7.3** To cover costs and expenses, including attorneys' fees, incurred in bringing the Lot into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, their families, invitees, or guests;

**8.7.4** To cover costs and expenses, including attorneys' fees, incurred as a result of the willful or negligent act or omission of any Owner or Occupant (or of any other Person for whom such Owner is legally responsible under Applicable Law); or

**8.7.5** To cover costs and expenses, including attorneys' fees, incurred as a result of any use of, or activity on, any Lot that causes maintenance or repair costs incurred or to be incurred by the Association with respect to Common Area to be substantially greater than those costs which would typically be incurred in relation to such Common Area, whether such use or activity is of a continuing nature or an isolated event.

This Section shall be subject to such limitations as are imposed by A.R.S. §33-1807 or any successor statute.

**8.8 Fines and Penalties.** If any Owner or Occupant, or any family member, licensee, guest or invitee, or lessee violates provisions of the Governing Documents, the Board, after providing the Owner with notice of the violation and an opportunity for a hearing as required by Applicable Law, may levy a fine upon the Owner, may suspend the violator's right to use the Common Area, and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including attorneys' fees and costs incurred. Such violation shall also be grounds for the Association, should it wish, to suspend the said rights of the Owner or Occupant and their family members, guests, and invitees.

In no event shall any fine be imposed for a default or violation of the Governing Documents, other than a failure to pay Assessments, without first affording the Owner notice and an opportunity for a hearing. The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner may be collected as provided by Applicable Law.

This Section shall be subject to such limitations as are imposed by A.R.S. § 33-1807 or any successor statute.

**8.9 Billing and Collection Procedures.** The Board shall have the right to adopt procedures for the purpose of making, billing, and collecting the Assessments and Special Use Fees. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association, even if the ownership of a Lot changes during an Assessment Period. Any successor Owner shall be given credit for any prepayments made by a prior Owner.

**8.10 Collection Costs and Interest on Delinquent Amounts.** Any Delinquent Amount shall have added thereto a late charge of the greater of Fifteen Dollars (\$15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within fifteen (15) days after the due date. Any Delinquent Amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, the then-prevailing interest rate on loans insured by FHA or VA, or such rate as is determined from time to time by the Board. The Owner shall be liable for all costs, including, but not limited to, attorneys' fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount, and such amounts, to the extent permitted by law, shall be deemed a part of the Assessment Lien. This Section shall be subject to such limitations as are imposed by A.R.S. §33-1807, or any successor statute.

**8.11 Assessments Upon Transfer.**

**8.11.1 Working Capital Fund.** To help ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, each Retail Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of a Lot a Working Capital Fund Assessment. A Working Capital Fund Assessment shall continue to be payable upon each subsequent sale of a Lot. Working Capital Fund Assessments may be used by the Association for payment of operating expenses or any other purpose permitted under the Governing Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration. The Working Capital Fund Assessment shall not exceed the product of one hundred percent (100%) of the then-current annual Regular Assessment attributable to the Lot multiplied by one-sixth (1/6<sup>th</sup>).

**8.11.2 Reserve Fund Assessment.** To help ensure that the Association shall have adequate funds reserved for repair and replacement of the Improvements within the Common Areas, each Retail Purchaser of a Lot shall pay to the Association, immediately upon becoming the Owner of the Lot, a Reserve Fund Assessment. A Reserve Fund Assessment shall continue to be payable upon each subsequent sale of a Lot. Payments made pursuant to this shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The Reserve Fund Assessment shall not exceed the product of one hundred percent (100%) of the then-current annual Regular Assessment attributable to the Lot multiplied by one-sixth (1/6<sup>th</sup>).

**8.11.3 Administrative Fee.** Upon each transfer of title to a Lot, a Retail Purchaser shall pay to the Association or to its managing agent, immediately upon becoming the Owner of the Lot, an Administrative Fee to cover administrative costs of Membership transfer in such amount as is established from time to time by the Board, not to exceed the amount permitted by Applicable Law.

**8.11.4 Exempt Transfers.** Notwithstanding the above, no Working Capital Fund Assessment, Reserve Fund Assessment, or Administrative Fee shall be levied upon an Exempt Transfer.

**8.11.5 Notice of Transfer.** Owner shall notify the Association of a pending title transfer at least ten (10) days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and such other information as the Board may reasonably require.

**8.12 Exempt Property.** Exempt Property shall be exempt from Assessments and the Assessment Lien, and shall have no voting rights in the Association; provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Assessments (prorated as of the date it ceased to be Exempt Property) and the Assessment Lien, and shall have voting rights in the Association as otherwise determined in this Declaration.

**8.13 Declarant's Exemption.** Anything in this Declaration to the contrary notwithstanding, neither Declarant nor any Declarant Affiliate shall be liable for nor shall they be required to pay Assessments of any nature for Lots owned by them. Nor shall Declarant or a Declarant Affiliate be liable for the payment of any Assessments for any Lot that, having been previously sold to a purchaser, has been deeded back to Declarant by foreclosure or deed in lieu of foreclosure.

In consideration for Declarant's and each Declarant Affiliate's exemption from Assessments, Declarant and each Declarant Affiliate shall pay, for any given Assessment Period in which Declarant and a Declarant Affiliate has paid or contributed to the Association less than the full ratable Regular Assessment for each Lot owned by Declarant or by a Declarant Affiliate, the actual shortfall or deficiency, if any, in ordinary operating revenue necessary to pay current ordinary expenses for the operation and maintenance of the Association and Common Area ("**Shortfall**"), but only up to the full Regular Assessment for each such Lot actually owned by Declarant or Declarant Affiliate in the Covered Property. A Shortfall shall exist only if current ordinary and budgeted expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that neither Declarant nor a Declarant Affiliate shall be liable for any Shortfall created by any decrease in the amounts of the Regular Assessments from those charged during any prior year, if the decrease was not approved by Declarant, nor for any Shortfall incurred after expiration of the Declarant Control Period. Notwithstanding anything contained in this paragraph to the contrary, Declarant shall not be obligated to pay to the Association as part of the Shortfall any funds for the establishment of replacement and maintenance reserves.

In the event of a Shortfall, Declarant and each Declarant Affiliate shall share the burden of payment of the Shortfall by paying their ratable share of same up to the full amount of the Regular Assessment for each Lot owned by them. Further, should Declarant assign its rights to the exemption from Assessments as provided herein, whether such assignment be in whole or in part, then the assignee shall, in the case of any Shortfall as described above (and meeting the conditions set forth above), be liable for its ratable share of same up to the full amount of the Regular Assessment for each Lot owned by them, and not more. In addition, such assignee's exemption, if any, shall expire with respect to any Lot upon which construction of Improvements has been completed.

Declarant and/or any Declarant Affiliate may at any time at their sole discretion elect to cease paying the Shortfall, if any, and to pay instead up to the full Regular Assessment for each Lot owned by Declarant or by Declarant Affiliate.

## ARTICLE IX

### ENFORCEMENT OF THE ASSESSMENT LIEN

**9.1 Association Remedies to Enforce Assessments.** If any Owner fails to pay any Assessment when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking any and all action available at law or in equity, including:

**9.1.1** Bringing an action against the Owner to recover judgment against the Owner who is personally liable for the Assessments or Special Use Fees; and

**9.1.2** Foreclosing the Assessment Lien against the appropriate Lot in accordance with then prevailing Arizona law. Though not required, the Association may record notice of its lien, and all costs of preparation of such notice, recording, and releasing same, including attorneys' fees and costs, shall be paid by the delinquent Owner, with all expense thereof being a part of the Assessment Lien.

**9.2 Subordination of Assessment Lien.** The Assessment Lien shall have priority from the date of recording of this Declaration, and shall be superior to all charges, liens, or encumbrances which hereafter are or may be imposed on any Lot, except as provided by Applicable Law. Without limitation, the Assessment Lien shall be junior to:

**9.2.1** The lien of any First Mortgage encumbering a Lot; and

**9.2.2** The lien for taxes or other governmental assessments which are deemed superior hereto by Applicable Law.

Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, the sale or transfer of any Lot pursuant to any First Mortgage foreclosure or any proceeding in lieu thereof shall extinguish the Assessment Lien as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot, or the Owner thereof, for liability from any Assessment becoming due prior to such transfer nor from the Assessment Lien arising in regard thereto. No Event of Foreclosure shall relieve the Owner whose interest was foreclosed from liability for Assessments payable through the date of such Event of Foreclosure.

In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a First Mortgagee obtaining an interest in a Lot through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

This Section shall be subject to such limitations as are imposed by A.R.S. §33-1807 or any successor statute.



**ARTICLE X**  
**MAINTENANCE**

**10.1 Common Area and Public Rights-of-Way.**

**10.1.1 Areas of Association Responsibility.** The Association or its duly delegated representative shall maintain and otherwise manage the Common Area. The Common Area to be maintained by the Association may be identified on recorded subdivision Plats approved by Declarant or in a Tract Declaration or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto. A Tract Declaration or a separate instrument approved by Declarant may limit the Association's responsibilities with respect to certain Common Area.

**10.1.2 Public Rights of Way.** If applicable, the Association or its duly delegated representative shall be responsible for the proper maintenance of all landscaping and sidewalks in public right-of-way area on the Owner's Lot or other public or easement areas adjacent to the Owner's Lot, except that, in the event the maintenance of such areas is the responsibility of a utility or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

**10.1.3 Adjacent Rights of Way.** The Association may be required by applicable governmental authorities to maintain landscaping and similar Improvements located within public rights of way adjacent to the Covered Property. The Association may also in its discretion elect to maintain landscaping and similar Improvements within public rights of way located within the Covered Property to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity with respect to such public rights of way.

**10.1.4 Standard of Care.** The Association shall use a reasonable standard of care in providing for the repair, management, and maintenance of the Common Area and any public rights of way for which the Association assumes responsibility so that the Covered Property will reflect a high degree of pride of ownership. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Area and applicable public rights of way.

**10.2 Duty of Maintenance.** Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot, including buildings, Improvements, private drives, easement areas, and grounds thereon, in a well-maintained, clean, neat, and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations, and requirements. Each Owner shall be responsible for the maintenance and repair of all utility lines, including sewer, located within such Owner's Lot, and such maintenance obligation shall include maintenance and repair beyond the Lot boundary to the point of service line connection or junction in the adjacent street, Common Area, or easement area, provided that the foregoing does not include any public sewer or other public utility lines in public easements located on the Owner's Lot.

No Improvement on any Lot shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the Improvement. In the event any Improvement is damaged or destroyed, then, subject to approval in accordance with Article IV, such Improvement shall be immediately repaired, rebuilt, or demolished by the Owner.

If any Owner fails to perform any necessary maintenance or make any necessary repairs after receiving notice from the Board of the requirement to perform such maintenance or repairs within the time limits established by the Board, the Board and its agents and representatives shall have the right, but not the obligation, to enter upon the Lot and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected as a Benefited Assessment. Any such entry shall be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

**10.3 Maintenance of Landscaping and Driveways.** Unless otherwise provided in a Tract Declaration or other recorded document, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

**10.3.1** On the Owner's Lot (including set back areas), except that in the event the maintenance of any portions of such Owner's Lot is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility; and

**10.3.2** Portions of the Common Area adjacent to an Owner's Lot and which are on the Lot's side of any wall erected on the Common Area.

As used herein, maintenance shall include, but not be limited to, keeping the areas neatly trimmed, cultivated, and free of trash, weeds, and unsightly materials. All lawn areas shall be timely mowed as needed to keep an even, well-groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds.

All trees, shrubs, plants, and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant, or ground cover shall be removed and replaced immediately.

All bed areas shall be kept free of weeds and cultivated periodically as needed. No area shall be over watered so as to create a risk of damage to nearby structures or Improvements. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways, and parking areas, located on the Owner's Lot.

Any Owner who fails to properly maintain the landscaping upon the Lot shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot after receiving notice from the Board to do so, and after such hearing and notice as may be required by Applicable Law, the Association shall have the right, but not the obligation, to enter upon the Lot, to conduct the necessary landscaping maintenance, and to charge the cost to the Owner. Such charges shall be collected as Benefited Assessments.

Each Owner acknowledges that the Design Review Guidelines or the Reviewing Authority, as part of its approval, may require that each Owner, or Owners of portions of the Covered Property, install landscaping on such Owner's Lot, within a specified period of time after acquiring title thereto, if landscaping was not installed by the builder at the time of such acquisition. Such obligation may include trees, plants, or other landscaping Improvements (together with an irrigation system sufficient to adequately water the trees, plants, or other

landscaping Improvements). All landscaping and irrigation facilities must have the written approval of the Design Review Committee before installation.

## ARTICLE XI

### RIGHTS AND POWERS OF ASSOCIATION

**11.1 Rights, Powers and Duties of the Association.** In addition to the rights and powers of the Association set forth in the Governing Documents, the Association shall have such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Governing Documents shall be available for inspection at the office of the Association or, if applicable, any managing agent retained by the Association, during normal business hours.

**11.2 Association's Rights of Enforcement.** The Association shall have the right, but not the obligation, to enforce the provisions of the Governing Documents that shall have been executed pursuant to or subject to the provisions of this Declaration. If the Association shall fail or refuse to enforce the provisions of this Declaration or any Tract Declaration after receipt of written request to enforce from any Owner, then any Owner shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration or any Tract Declaration.

**11.3 Enforcement Methods and Means.** The Association, to the extent permitted by Applicable Law, may enforce the provisions hereof at law or in equity, including, but not limited to:

**11.3.1** Imposing reasonable monetary penalties after affording an Owner notice and an opportunity for a hearing, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her family members, guests, invitees, and Occupants;

**11.3.2** Suspending an Owner's right to vote after affording such Owner notice and an opportunity for a hearing;

**11.3.3** Suspending any Person's right to use the Common Areas;

**11.3.4** Suspending any services provided by the Association to an Owner or the Owner's property if the Owner is more than fifteen (15) days delinquent in paying any Assessment or other charge owed to the Association;

**11.3.5** Exercising self-help or taking action to abate any violation of the provisions hereof;

**11.3.6** Requiring an Owner at the Owner's expense to remove any offending condition, structure, or Improvement on the Owner's Lot after affording the Owner notice and an opportunity for a hearing, and further requiring such Owner to restore his or her Lot to the condition in which it previously existed, without such action being a trespass;

**11.3.7** Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply

with the terms and provisions of the Governing Documents from continuing to perform and further activities on the Covered Property;

**11.3.8** Towing vehicles which are parked in violation of the Governing Documents; and

**11.3.9** Filing suit at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate.

The Board may weigh financial and other factors, such as possible defenses, legal merit, and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to take legal action shall not limit or waive the right of any Owner to pursue proper action nor the right of the Association to pursue action at a future time should it so desire.

**11.4 Contracts with Others; Bulk Service Agreements.** Subject to the restrictions and limitations contained in the Governing Documents and any Applicable Laws, the Association may enter into contracts with others, including Declarant and Declarant Affiliates, and such contracts shall not be invalidated by the fact that one (1) or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant Affiliates; provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract shall be fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association shall be for a term not exceeding the maximum term permitted by Applicable Law.

The Association may, without limitation, provide services and facilities for the Members of the Association and their guests, lessees, and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense and payable as part of the Regular Assessment or may be funded as otherwise determined by the Board in accordance with this Declaration. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. If all Lots within the Covered Property are to be served by a particular bulk service agreement, the Board shall have the option either to (a) include the Association's costs under such bulk service agreement in the budget for each applicable fiscal year and thereby include such costs in the Regular Assessments for each applicable year, or (b) separately bill to each Owner his, her, or its proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly), and such charges shall be secured by the Assessment Lien.



**11.5 Change of Use or Conveyance of Common Area.** Declarant and the Association shall have broad rights to convey and re-subdivide the Common Area, including as set forth in Section 3.1 and elsewhere herein. In addition, and without limitation, after expiration of the Declarant Control Period, the Common Area may be conveyed or the use thereof changed as follows:

**11.6 Resolution of Board.** The Association, upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Area is no longer in the best interests of the Owners and Occupants, and upon the approval of such resolution by Voting Members representing at least two-thirds (2/3) of the votes allocable to Lots within the Covered Property, and Declarant so long as Declarant is a Member of the Association, the Board shall have the power and right to change the use of Common Area (and in connection therewith to take whatever actions are required to accommodate the new use). The foregoing provisions shall not apply to minor or insignificant changes in use, such as, but not limited to, adjustments of fence lines or boundary walls, expansions, or relocations of private streets and the like, and such matters may be approved by the Board, with the approval of the Class B Member so long as such Membership exists.

**11.7 Dedications.** The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public authority, utility, or public service corporation without the approval of the Members and without a vote or meeting of Members. In addition, the Association may make such other dedications, provided that (a) the Board in its sole discretion determines that such a transfer or dedication does not have a material and substantial adverse effect on the enjoyment of the remaining Common Area by the Owners and Occupants, and (b) such transfer shall be approved by Class B Member so long as such Membership exists.

**11.8 Re-subdivisions.** Declarant shall at any time have the right to cause the Association or the Board to re-subdivide Common Area, and may do so without the consent or approval of any other Member and without a vote or meeting of Members.

## ARTICLE XII

### EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA

**12.1 Eminent Domain.** In the event of a threatened taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Any awards received on account of the taking shall be paid to the Association. The Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, (taking into account a reduction in the distribution to those Owners paying reduced amounts for Assessments pursuant thereto), and all holders of liens and encumbrances, as their interest may appear of record.

The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation.

**12.2 Authority to Purchase Insurance.** The Association shall, as a Common Expense, purchase and maintain such property damage and liability insurance upon the Common Area and such other insurance as the Board, in its absolute discretion, shall determine. Without limiting the provisions of the preceding sentence, the Association shall maintain as a Common Expense the following: (i) property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not 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; (ii) comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than One Million Dollars (\$1,000,000.00), which insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party; (iii) workers' compensation insurance to the extent necessary to meet the requirements of the laws of Arizona; and (iv) if the Covered Property is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended. The Association shall be the named insured in all policies providing such insurance. Without limitation, the Association may also consider all other forms of insurance and endorsements thereto, including replacement value coverage, floodplain coverage, fidelity protection, workers' compensation coverage for employees, if any, and all forms of accident, personal injury, and property damage insurance, including, if appropriate, waivers of subrogation and non-contribution endorsements. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions or the Board, in the exercise of its reasonable judgment, decides not to purchase such other forms of insurance.

Without limiting the provisions of the preceding paragraph, the Association shall obtain and maintain at all times, as a Common Expense, directors' and officers' liability insurance covering all officers and directors of the Association as well as all regular and alternate members of Board appointed committees, Declarant, Declarant Affiliates, and, to the extent such insurance is reasonably available, any managing agent under contract with the Association, all in amounts and on terms adequate to permit the Association to indemnify such persons pursuant to the provisions hereof and pursuant to the provisions of the Articles and Bylaws. Neither the Association, any Board member, the Declarant, any Declarant Affiliate, nor any managing agent shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

**12.3 Individual Responsibility.** It shall be the responsibility of each Owner or Occupant to provide insurance for real or personal property or interests owned or held by such

Owners within the Covered Property, including, but not limited to, homeowners insurance, hazard, fire and casualty insurance, liability insurance, and property damage insurance covering all additions and Improvements to Lots, furnishings and personal property therein, and personal liability.

Each Owner and Occupant shall also provide such other insurance which is not carried by the Association as such Person desires. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the Improvements or fixtures on the Common Area. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

**12.4 Insurance Claims.** The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association covering Common Area and Improvements thereon, property or interests of the Association, liability of the Association, and other such insurance. Each Owner shall execute and deliver releases upon the payment of claims, and do all other acts reasonably necessary to accomplish such appointment. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

Any Owner who causes any damage or destruction of any areas for which the Association maintains insurance is responsible for the payment of any deductible portion of the insurance, which will become a Benefited Assessment against the Owner and the Lot.

## ARTICLE XIII

### DISPUTE RESOLUTION

#### **13.1 Approval of Litigation.**

**13.1.1 Required Procedures.** The Association shall not initiate or voluntarily participate in any litigation, arbitration, claim to regulatory authorities, or any other binding legal proceeding with respect to any matter affecting or arising from the Covered Property ("**Property Litigation**") except upon compliance with the requirements of this Article XIII.

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

(a) If the Property Litigation arises from an alleged Defect (as defined in Section 13.2.1 below), the Association shall provide all Owners with at least the following information about the proposed Property Litigation not later than the time the vote of Owners is taken:

- (i) a reasonably detailed description of the alleged Defect;

(ii) a good faith description of any attempts to correct the alleged Defect by the Person alleged to be responsible for it and the opportunities provided to that Person to correct the alleged Defect;

(iii) a certification from an architect or engineer licensed in the State of Arizona that the alleged Defect exists, along with a description of the scope of work necessary to cure the alleged Defect and a resume of the architect or engineer;

(iv) a good faith estimate of the cost to cure the alleged Defect;

(v) the name and professional background of any attorney retained (or proposed to be retained) by the Association to pursue the claim against arising from the alleged Defect, and a description of the relationship between the attorney and member(s) of the Board or the Association's management company (if any);

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

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

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

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

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

(b) The costs of any Property Litigation shall be paid by the Association only with monies that are collected by the Owners for that purpose. The Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations.

(c) Each Owner shall notify prospective purchasers of any Property Litigation initiated by the Board.

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

**13.1.3 Exempt Actions.** The procedural requirements set forth in Section 13.1.1 above shall not apply to any proceedings initiated by the Association to (a) collect unpaid Assessments; (b) enforce the use and occupancy restrictions in the Governing Documents, the architectural, design, and landscape controls, and the obligations regarding maintenance of Lots set forth in this Declaration; (c) enforce the Design Review Guidelines or the Association Rules; or (d) enforce a contract entered into by the Association with vendors



providing services or materials to the Association. Property Litigation shall not be construed to mean litigation, arbitration, or other proceedings in which the Association is participating by reason of having been named a defendant.

**13.1.4 Non-Litigation Advice.** Nothing in this Section 13.1 shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (a) enforce the Governing Documents, (b) comply with the statutes or regulations related to the operation of the Association, (c) amend the Governing Documents in accordance with their terms, (d) grant easements or convey Common Area as provided in this Declaration, or (e) perform the obligations of the Association as provided in this Declaration.

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

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

**13.2.2 Notice of Alleged Defect.** Within sixty (60) days after discovering any condition that will be alleged to be a Defect, a Defect Claimant shall give written notice of the alleged Defect ("**Notice of Alleged Defect**") to the Person or Persons believed by the Defect Claimant to be responsible for the alleged Defect. The Notice of Alleged Defect shall include a reasonably detailed description of the alleged Defect and any action the Defect Claimant believes to be necessary to cure the alleged Defect.

**13.2.3 Right to Enter, Inspect, Repair and/or Replace.** Within a reasonable time after the receipt of a Notice of Alleged Defect, the Person who received the Notice of Alleged Defect shall have the right, upon reasonable notice to the Defect Claimant and during normal business hours, to enter the affected portion of the Covered Property for the purposes of inspecting and/or conducting testing and, if the Person so chooses in its sole discretion, repairing and/or replacing the alleged Defect. Any agreement in writing for repair, replacement, or other curative action shall be enforceable against both parties to the agreement without requiring either party to again go through the notice and other procedures provided for in this Section 13.2. In conducting such an inspection, testing, repair, and/or replacement, the Person receiving the Notice of Alleged Defect shall be entitled to full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing, and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant and to take any actions it deems reasonable and necessary under the circumstances.

**13.2.4 No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in this Section 13.2 shall be construed to impose any obligation on any Person to inspect, test, repair, or replace any item or alleged Defect for which the Person is not otherwise obligated under Applicable Law or other binding legal obligation. The right to enter,

inspect, test, repair, and/or replace an alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to any Person except by a written document executed by that Person.

**13.3 Alternative Dispute Resolution.** Any dispute, controversy, disagreement, or claim of any kind or nature arising in any way from the Covered Property, including, but not limited to, the physical condition, use, appearance, or operation of the Covered Property or any portion of it, or agreements or other legally binding instruments or obligations pertaining to the Covered Property or any portion of it (each, "**Dispute**") shall be subject to arbitration in accordance with this Section 13.3, unless specifically exempted, if the Dispute is between or among (a) the Declarant and/or any builder (or the officers, directors, employees, brokers, agents, consultants, contractors, or subcontractors of either of them) on the one hand, and any Owner or the Association, on the other hand; or (b) the Association and any Owner. This Section will apply to any such Dispute regardless of whether it involves theories based upon contract, tort, statute, or other legal theory. No Person bound by this Section 13.3 may commence legal proceedings of any kind including, but not limited to, judicial and regulatory complaints, in lieu of complying with the procedures and requirements set forth herein. The procedures shall not apply to Disputes relating to the payment of any type of Assessment, including, without limitation, the foreclosure of any liens, or to claims by any of the foregoing Persons against third parties not listed above (unless the third party has agreed to comply with the procedures set forth in this Section 13.3).

**13.3.1 Notice of Claim.** Any Person wishing to pursue resolution of, or a remedy for, a Dispute ("**Claimant**") must give written notice of the Dispute to the Person or Persons believed to be responsible for the circumstances causing the Dispute or believed to be responsible for remedying those circumstances (in either case, "**Respondent**"). The notice must set forth in reasonable detail the circumstances alleged to give rise to the Dispute and the remedy or other action sought by the Claimant.

**13.3.2 Final and Binding Arbitration.** Claimant shall have one hundred eighty (180) days following delivery of the notice by the Claimant to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 13.3. If Claimant does not submit the Dispute to arbitration within one hundred eighty (180) days after delivery of the notice by Claimant, Claimant shall be deemed to have waived any claims related to the Dispute, and all other parties to the Dispute shall be released and discharged from any and all liability to the Claimant on account of the Dispute, provided nothing herein shall release or discharge any party from any liability to Persons who are not a party to the proceedings. An arbitration pursuant to this Section 13.3 shall not be combined with any other arbitration without the consent of all parties to this arbitration.

(a) The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Person shall be required to participate in the arbitration proceeding if (i) all parties against whom the Person would have necessary or permissive cross-claims or counterclaims ("**Necessary Party**") are not or cannot be joined in the arbitration proceedings, or (ii) the enforcement of this Section 13.3.2 would materially impair insurance coverage for the Person that would have otherwise provided the Person protection with respect to the Dispute.

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

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

(d) A single arbitrator shall be selected. The arbitrator shall have served as a judge of the Arizona Superior Court, the Arizona Court of Appeals, or the Arizona Supreme Court by appointment of the Governor. The arbitrator shall be neutral and impartial and shall not have any relationship to the parties or interest in the Covered Property. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after the Dispute is submitted to final and binding arbitration pursuant to Section 13.3.2. If an arbitrator resigns or becomes unwilling or unable to continue to serve as an arbitrator for the subject Dispute, a replacement shall be selected in accordance with this Section 13.3.2.

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

(f) The arbitrator may require one (1) or more pre-hearing conferences.

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

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



(i) THE DECISION AND AWARD WILL BE MADE BY THE ARBITRATOR WITHOUT A COURT TRIAL AND WITHOUT A JURY. Each party to the arbitration WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A JURY OR BY A COURT and agrees to accept the award of the arbitrator as final. The arbitrator shall decide all issues in the Dispute by strictly applying Arizona law and this Section 13.3.2. Subject to the limitations imposed in this Section 13.3.2, the arbitrator shall have the authority to try all issues, whether of fact or law. The arbitrator shall render a final decision in writing no later than sixty (60) days following the conclusion of the arbitration proceedings or such longer period as the parties to the Dispute mutually agree in writing. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held if not Arizona.

(j) Notwithstanding contrary provisions of the commercial arbitration rules or any other provision of this Section 13.3.2, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages if applicable.

(k) Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by the party. Each party to the Dispute shall share equally all charges of the arbitrator unless otherwise agreed to by the parties.

**13.4 Waiver.** NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES, AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XIII AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE XIII. THE ASSOCIATION, EACH OWNER, AND DECLARANT ACKNOWLEDGE THAT, BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE XIII, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER, AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT THE OWNER IS GIVING UP ANY RIGHTS THE OWNER MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

**13.5 Enforcement of Resolution.** If an arbitration award is made in accordance with Section 13.3.2 and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the awarded terms without the need to again comply with the procedures set forth in Section 13.3. In that event, the party taking action to enforce the terms of the award shall be entitled to recover from the non-complying party (or if more than one [1] non-complying party, from all such parties pro rata), all expenses reasonably incurred to enforce the awarded terms including, but not limited to, attorneys' fees, witness fees, costs, and all litigation-related expenses.



**13.6 Confidentiality.** All papers, documents, briefs, written communication, and testimony transcripts, as well as any arbitration decisions, shall be confidential and not disclosed to anyone other than the arbitrator, the parties to the Dispute, the attorneys of the parties to the Dispute, and expert witness (where applicable to their testimony), except to the extent any disclosure is required by Applicable Laws or order of any court, or except with the prior written consent of all parties to the Dispute, confidential information may be disclosed to third parties. Prior to disclosure, all third parties must agree in writing to keep such information confidential.

**13.7 Statutes of Limitations.** Nothing in Section 13.3 shall be considered to toll, stay, reduce, or extend any applicable statute of limitations. All statutes of limitation applicable to claims that are subject to arbitration pursuant to the alternative dispute resolution provisions of Section 13.3 shall apply to the commencement of proceedings pursuant to Section 13.3, and nothing herein shall be construed to mean that any arbitrator shall have authority to consider Disputes that would otherwise be barred by applicable statutes of limitation.

**13.8 Disputes between Owners.** In the event of a Dispute between two (2) or more Owners not covered by the dispute resolution provisions of Section 13.3, the Owners are hereby strongly encouraged (but not required) to employ the dispute resolution procedures set forth above for resolution of the Dispute. The Board may offer such mediation, conciliation, and other services as may be desired by the affected Owners to assist with resolution of the Dispute, but shall have no power or authority to make binding decisions regarding the matter in issue between the Owners. The preceding sentence shall in no way be construed as limiting power or authority the Board might otherwise have to enforce and construe the provisions of this Declaration for the Association's own purposes.

**13.9 Protection of Declarant.** The provisions of this Article may not be amended without the written approval of Declarant.

## ARTICLE XIV

### TERM; AMENDMENTS; TERMINATION

**14.1 Term; Method of Termination.** This Declaration shall be effective upon its recordation and, as amended from time to time, shall continue in full force and effect unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%) of the total votes entitled to be cast by the entire Membership. Upon the recording of a certificate of termination executed by the President and Secretary of the Association confirming such vote, this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona. No such termination shall be effective during the Declarant Control Period unless approved in writing by Declarant.

#### **14.2 Amendments**

**14.2.1 By Declarant.** In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may amend this Declaration for any purpose and without the consent or approval of any Owners, Members, or any other Person.

In addition to the foregoing, after termination of the Declarant Control Period and for so long as Declarant owns any portion of the Covered Property, Declarant may, of its own volition and without the consent or approval of any Owners or Members or any other Person, amend this Declaration for the following purposes: (a) to bring any provision hereof into compliance with Applicable Law; (b) to satisfy the requirements of any Agency pertaining to lending criteria or established as conditions for acceptability or approval of mortgages, mortgage insurance, loan guarantees, or other factors; or (c) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof.

Any amendment during such time as Declarant is a Class B Member or a Class A Member of the Association shall require the written approval of Declarant.

**14.2.2 By the Association.** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members, which in the aggregate represent at least two-thirds (2/3) of the total Class A votes allocable to Lots, and Declarant's consent as well, so long Declarant owns any portion of the Covered Property. The Board, with a vote of the Voting Members, may, with the written approval of Declarant so long as Declarant is a Member, make amendments necessary: (a) to bring any provision hereof into compliance with Applicable Law; (b) to satisfy the requirements of any Agency pertaining to lending criteria or established as conditions for acceptability or approval of mortgages, mortgage insurance, loan guarantees, or other factors; or (c) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof.

**14.2.3 Amendment of Tract Declarations.** A Tract Declaration may be amended as provided in such Tract Declaration, but only with the consent of Declarant so long as Declarant owns any Covered Property. Thereafter, a Tract Declaration may be amended as provided therein, and with the approval of the Board.

## ARTICLE XV

### PROJECT DISCLOSURES

**15.1 View Impairment.** Neither Declarant nor the Association guarantees or represents that any view or passage of light and air over and across any portion of the Covered Property, including any Lot, from adjacent Lots or Common Area will be preserved without impairment. Neither Declarant nor the Association shall have the obligation to prune, thin, remove, or replace trees or other landscaping, except as required by the Design Review Committee. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any view which exists at any point in time for a Lot may be impaired or obstructed by further construction, including, without limitation, by construction of Improvements (including, without limitation, landscaping) by Declarant or by any third Person (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

**15.2 Sewer Easement.** A portion of Common Area "A" and "B" is subject to a twenty-foot (20') public sewer easement ("Sewer Easement") as shown on the Plat. Neither the Association, the members of the Board, the officers of the Association, the Association's

management company, nor Declarant or Declarant Affiliates, nor any director, officer, agent, or employee of any of the foregoing, shall be liable to any Owner, Occupant, or their families, invitees, or licensees for any claims or damages resulting, directly or indirectly, from the existence and use of the Sewer Easement.

## ARTICLE XVI

### MISCELLANEOUS

**16.1 Enforcement Rights.** Each Owner (including Declarant, so long as Declarant is an Owner) shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

**16.2 Interpretation of the Covenants.** Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration and any Tract Declaration. In the 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 as to all Persons and property benefited or bound by this Declaration.

**16.3 Assumption of Risk.** Neither the Association, the members of the Board, the officers of the Association, the management company of the Association, nor Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety, or welfare of any Owner or Occupant of any Lot or any guest or invitee of any Owner or Occupant or for any property of any such persons. Each Owner and Occupant of a Lot, and each guest and invitee of any Owner or Occupant, shall assume all risks associated with the use and enjoyment of the Covered Property, including all Common Area.

Neither the Association, the members of the Board, the officers of the Association, the Association's management company, nor Declarant shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of above-ground or underground utility lines, utility sub-stations, or other utility facilities adjacent to, near, over, under, or on the Covered Property. Each Owner and Occupant of a Lot, and each guest and invitee of any Owner or Occupant, shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of above-ground or underground utility lines, utility sub-stations, or other utility facilities, and further acknowledges that neither the Association, the members of the Board, the officers of the Association, the Association's management company, nor Declarant have made any representations or warranties, nor has any Owner or Occupant, or any guest or invitee of any Owner or Occupant, relied upon any representations or warranties, expressed or implied, relative to the condition or impact of above-ground or underground utility lines, utility sub-stations, or other utility facilities.

No provision hereof, or of the Articles or Bylaws, or of the Design Review Guidelines, shall be interpreted as creating a duty of the Association, the members of the Board, the officers of the Association, the management company of the Association, or Declarant to protect or further the health, safety, or welfare of any Person, even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the

Covered Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the Board, the Association's management company, and Declarant and all their directors, officers, committee and board members, employees, agents, contractors, subcontractors, successors, and assigns arising from or connected with any matter for which the liability has been disclaimed.

**16.4 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.

**16.5 Declarant's Disclaimer of Representations.** Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Sierra De Oeste can or will be carried out, or that any real property now owned or hereafter acquired by it, is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect.

No provision or content of the Development Plan shall be deemed a representation that any facility, land, or feature shall be included either in the Covered Property or the Common Area.

While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one (1) or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

**16.6 Severability.** If any provision of the Governing Documents or any section, clause, sentence, phrase, or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Governing Documents, and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstances, shall not be affected thereby, and the remainder of the Governing Documents shall be construed as if the invalid part were never included therein.

**16.7 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 any resolution of the Board to be given to any Owner or Occupant, 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.

**16.8 Successors and Assigns.** Any reference in this Declaration to Declarant shall include any successors or assignees of all or a specified portion of Declarant's rights and powers hereunder. Any such assignment shall be evidenced by a recorded instrument executed by Declarant and its successor or assignee whereby such rights and powers (or any specified portion thereof) are specifically assigned.





**EXHIBIT A**

**LEGAL DESCRIPTION**

Lots 1 through 144, inclusive, and Common Areas "A" (Open Space) and "B" (Natural Undisturbed Open Space) of Camino De Oeste, according to the Plat thereof of record in the Office of the County Recorder, Pima County, Arizona, in Sequence No. 20171600112.

## EXHIBIT B

### USE RESTRICTIONS

1. **General.** The Covered Property shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for Declarant or the Association consistent with this Declaration and any Tract Declaration and sale of Lots and Dwelling Units), subject to Applicable Laws.

2. **Prohibited Uses.** The following uses are prohibited:

(a) any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation, or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is otherwise materially injurious to the perceived value of any Lot; and,

(b) any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception, or special use ordinance or regulation) of the United States, the State of Arizona, the County of Pima, the Town of Marana, or any other governmental entity having jurisdiction over the Covered Property.

3. **On Site Grading and Drainage.** No water shall be drained or discharged from any Lot or building thereon, except in accordance with approvals of the Reviewing Authority and applicable Town ordinances. No Dwelling Unit, structure, building, landscaping, soil or other fill material, fence, wall, or other Improvement shall be constructed, installed, placed, or maintained in any manner that would obstruct, interfere with, or change the direction or flow of water in accordance with drainage plans for the Covered Property or any part thereof, or for any Lot as shown on the approved drainage plans on file with the governmental jurisdiction in which the Covered Property is located. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with, or change the direction or flow of water in accordance with the approved drainage plans, unless resubmittals have first been made and revised plans approved.

4. **Utility Lines and Connections.** All utility wires, lines, pipes, conduits, facilities, connections, and installations (including, without limitation, electrical, telephone, cable television, water, gas, and sanitary sewer) shall be installed and maintained underground or concealed in, under, or on structures approved in writing in advance by the Reviewing Authority. All transformers shall be placed on or below the surface of the Lot. Temporary above-ground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of the Reviewing Authority. Notwithstanding the foregoing, existing and future utility installations may be installed above ground if approved by Declarant.

5. **Overhead Encroachments.** No tree, shrub, or planting of any kind shall be allowed to overhang or encroach upon any public right of way, bicycle path, or any other pedestrian way from ground level to a height of eight feet (8'), without the prior written approval of the Reviewing Authority. The Reviewing Authority shall have the right to cause the Association to trim any offending tree, shrub, or planting.

6. **Nuisances; Dust Control; Construction Activities.** No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly, or offensive. Each Lot shall be landscaped, as required, and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although construction activities conducted or contracted by Declarant or Declarant's Affiliates shall not be considered a nuisance or otherwise prohibited, Lots must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot, or which shall interfere with the reasonable quiet enjoyment of each of the Owners and Occupants. The Association may, but is not required, to take action to abate what any Owner may consider a nuisance.

7. **Temporary Occupancy and Temporary Buildings; Outside Storage.** No trailer, manufactured or mobile home, basement of any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. No temporary construction buildings or trailers may be installed or kept on any Lot without the prior written approval of the Reviewing Authority. Any such temporary buildings or trailers approved by the Reviewing Authority shall be removed immediately after the completion of construction and acceptance of the work by the Town and, if applicable, the Association, and in no event shall any such buildings, trailers, or other structures be maintained or kept on any Covered Property for a period in excess of twelve (12) months without the prior written approval of the Reviewing Authority. The provisions of this Section shall not apply to construction or sales activities of Declarant or any Declarant Affiliate. Except during construction, no materials, supplies, equipment, finished or semi-finished products, or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article IV. Any permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of Improvements on any Lot, necessary construction materials and supplies may be stored on the Lot without the need for a solid visual barrier providing such materials and supplies are kept in neat order considering the construction activities. The Reviewing Authority is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

8. **Health and Welfare.** In the event uses of, activities on, or facilities upon or within a Lot are deemed by the Board to be a nuisance or to adversely affect the health or welfare of Owners or Occupants, the Board or the Reviewing Authority may make rules restricting or regulating their presence.

9. **Incidental Uses.** Subject to the provisions of any applicable Tract Declaration, the Board may approve, regulate, and restrict incidental uses of property within the Covered Property. By way of example and not of limitation, the Board may adopt Association Rules governing tennis and/or swimming clubs and facilities, and other recreational facilities.

10. **Antennas and Dishes.** No television, radio, or other electronic towers, aerials, antennae, satellite dishes, or device of any type for the reception or transmission of radio or television broadcasts or other means of communication (collectively, "antennae") shall hereafter be erected, constructed, placed, or permitted to remain on any Lot or upon any Improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by



47 CFR Part 1, Subpart S, Section 1.4000 of the Telecommunications Act of 1996 (or any successor statute), as amended from time to time. The Association shall be empowered to adopt Association Rules governing the types of antennae that are permissible hereunder and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures. To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to Association Rules may only be installed in a side or rear yard location, not Visible From Neighboring Property, or integrated with the Dwelling Unit and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all Applicable Laws and regulations.

**11. Solar Equipment.** Solar heating equipment or device is permitted outside the Dwelling Unit, provided an application for such equipment or device must be submitted for approval to the Design Review Committee prior to installation and approval will be granted only if (a) such equipment or devices is designed for minimal visual intrusion when installed (i.e., is located in a manner which minimizes visibility from the street or an adjacent Lot) and (b) the equipment or device complies with the Design Review Guidelines, within the confines of the Applicable Laws and governmental regulations.

**12. Clothes Drying Facilities.** No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot without the prior written consent of the Reviewing Authority unless they are not Visible From Neighboring Property.

**13. Mineral Exploration.** No Lot shall be used in any manner to explore for, quarry, mine, remove, or transport any water, oil, or other hydrocarbons, minerals, gravel, gas, earth, or any earth substance of any kind. Neither grading nor other earthwork nor landscaping activities conducted or contracted by Declarant or any Declarant Affiliate shall be governed, limited, or prohibited in any way by this Section.

**14. Diseases and Insects.** No Owner or Occupant shall permit anything or condition to exist upon any Lot which shall induce, breed, or harbor infectious plant or animal diseases or noxious insects.

**15. Window Coverings.** Within sixty (60) days of occupancy of any Dwelling Unit on a Lot, each Owner shall install permanent suitable window treatments on all windows facing any street. No bed sheets, newspapers, reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors, or similar type items, shall be installed or placed upon the outside or inside of any windows.

**16. No Commercial Use.** No gainful occupation, profession, trade, or other nonresidential use shall be conducted on or in any Lot unless it meets all of the following requirements:

(a) The existence or operation of the business activity is not apparent from the outside of the Dwelling Unit and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;

(b) The business activity conforms to all zoning requirements for the Lot;

(c) It does not involve solicitation of Owners or Occupants of the Covered Property by anyone, whether or not a resident; and

(d) The business activity is lawful and consistent with the residential character of the neighborhood and does not constitute a nuisance or hazard or offensive use within the Covered Property as determined in the discretion of the Board.

Notwithstanding the foregoing, a child or adult day care business shall not be prohibited, provided it complies with applicable zoning. If the Board determines that the use of a Lot violates the provisions hereof, then the Board shall have the authority to require that the Owner in question cease immediately. In no event shall any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home, whether or not providing services to occupants, be permitted within the Covered Property, except that this prohibition shall not apply to group homes or similar living or care arrangements which by Applicable Law may not be prohibited by enforcement of private restrictive covenants. The provisions of this Section shall not apply to construction or sales activities of Declarant.

**17. Restrictions on Leasing.** Subject to the terms of this Section, an entire Lot and all improvements thereon may be leased to a lessee from time to time by an Owner provided that each of the following conditions is satisfied:

(a) The lease or rental agreement must be in writing and shall be for a term of no less than six (6) months, and a Lot may not be leased more than twice during any calendar year except as may be allowed otherwise by the Association Rules.

(b) The lease shall include the entire Lot and all improvements thereon, and no lease or rental agreement shall be for a portion of the Lot or the improvements thereon.

(c) The lease or rental agreement must contain a provision that the lease or rental agreement is subject to this Declaration and other Governing Documents, and that any violation of any of the foregoing shall be a default under the lease or rental agreement.

(d) Before commencement of the lease term, the Owner shall provide the Association with the name(s) of the tenant(s) and each adult who will reside on the Lot and the address and telephone number of the Owner.

(e) Any Owner that leases or rents such Owner's Lot shall keep the Association informed at all times of the Owner's address and telephone number.

(f) If any tenant breaches any restriction contained in the Governing Documents, the Owner, upon demand by the Association, shall immediately take such actions as may be necessary to correct the breach, including, if necessary, eviction of the tenant.

**18. Animals.** No animal, livestock, poultry, or fowl of any kind, other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. Free-ranging domestic animals are prohibited within the Covered Property. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing, or confinement of any permitted pet shall be Visible From Neighboring Property. The Board shall have the right by the Association Rules or otherwise to determine what shall constitute a generally recognized house pet and what a reasonable number of such pets shall, in any instance, constitute. Notwithstanding the foregoing, no permitted pets may be kept on or in any Lot which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the

pet's owner or on which the pet's owner is a tenant, guest, or invitee. The Board has the right, after notice and the opportunity for a hearing, to require the removal of any pet which the Board, in its sole discretion, has determined is a nuisance. Persons walking pets shall carry a "pooper scooper" (a hand-held shovel or other instrument designed for removing animal excrement from the ground) with them at all times and shall remove the pet's excrement from the Covered Property.

19. **Garbage.** No garbage or trash shall be allowed, stored, or placed on a Lot except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. The Board may also determine to require that the Association or individual Owners shall employ one (1) or more of a limited number of waste management or pick-up companies to retrieve waste and refuse from the Covered Property or portions thereof. The Board may establish regulations as to the times and duration that waste containers may be Visible From Neighboring Property for pick-up, and may determine and regulate the type and appearance of waste containers. The provisions of this Section shall not apply to waste generated by construction or sales activities of Declarant or any Declarant Affiliates.

20. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which Declarant any Declarant Affiliates or the Association may require for the construction, operation, and maintenance of the Project. Lawn and garden equipment may be kept on a Lot, provided such equipment is stored so as not to be Visible From Neighboring Property.

21. **Basketball Equipment.** No basketball backboard, hoop, or similar structure or devise shall be permitted except in accordance with the Design Review Guidelines of the Design Review Committee.

22. **Playground Equipment.** No jungle gyms, swing sets, or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Reviewing Authority.

23. **Lights.** Except as initially installed by Declarant or any Declarant Affiliate, no spotlights, floodlights, or other high intensity lighting shall be placed or utilized upon any Lot, or any structure erected thereon, which in any manner will allow light to be directed or reflected on any other property except as approved by the Reviewing Authority.

24. **Signs.** No signs of whatever nature may be erected or placed within the Covered Property, except such signs as are permitted by the Design Review Guidelines. Except as stated, no sign shall be placed on any Lot other than:

(a) signs required by legal proceedings;

(b) a maximum of two identification signs for Dwelling Units, each with a maximum face area of seventy-two (72) square inches or less;

- (c) signs, including "for sale" signs and subdivision signs, the nature, number, location, content, and design of which shall comply with the Design Review Guidelines;
- (d) such other signs as the Design Review Guidelines shall permit;
- (e) signs of Declarant or Declarant Affiliates relating to construction or sales activities; and
- (f) relating to construction or sales activities.

The foregoing restrictions shall be subject to such limitations and privileges as are established by Applicable Laws, including for the placement of political signs and signs pertaining to candidates for political office or to other such protected matters.

After providing notice to any Owner that a sign is in violation of the Governing Documents, the Association has the right to remove such signs from the Common Areas, the Lot, or any other place in the Covered Property and to dispose of such signs. The Association has an easement over any Lot for that express purpose and, in exercising its easement rights, is not guilty of trespassing.

In addition to the foregoing, Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon, and across all Common Area for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Covered Property, but in no event later than twenty (20) years after the date this Declaration is recorded.

**25. Vehicles and Parking.** As used in this Section, (i) "**Motor Vehicle**" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all-terrain vehicle, utility vehicle, pickup truck, or other motor vehicle; and (ii) "**Streets**" means the streets shown on any Plat of the Covered Property or private roadways.

(a) No Motor Vehicle, recreational vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked on any Street within the Covered Property.

(b) No Motor Vehicle classed by manufacturer rating as exceeding one (1) ton, recreational vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed, or repaired on any Lot or Common Area if Visible From Neighboring Property or on any Street within the Covered Property

(c) No Motor Vehicles designed or used for carrying merchandise, supplies, or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for vehicles parked entirely within an enclosed garage and the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers, or vendors of Declarant, the Association, or the Owners or Occupants.

(d) The Board shall have the right and power to adopt Association Rules governing and further restricting the parking of Motor Vehicles on Lots or the Streets and



implementing the provisions of this Section, and establishing certain exceptions that may in certain cases be warranted. In the event of any conflict or inconsistency between the provisions of this Section and the Association Rules adopted by the Board, the provisions of this Section shall control.

(e) The Association may adopt additional parking restrictions, including the establishment of fines and assessments for their violation, enforceable as all other Assessments and in the same manner as other provisions of this Declaration.

**26. Installation of Landscaping.**

(a) Within ninety (90) days after becoming the Owner of a Lot, the Owner shall install landscaping and irrigation improvements in that portion of the Owner's Lot which is between the public right-of-way adjacent to the Lot and the exterior wall of the Dwelling Unit located on the Lot, or any view fencing located on the Lot, or any wall separating the side or backyard of the Lot from the front yard of the Lot. Within one hundred twenty (120) days after becoming the Owner of a Lot, the Owner shall install landscaping and irrigation improvements in the backyard portion of the Owner's Lot. The landscaping and irrigation improvements shall be installed in accordance with plans approved in writing by the Design Review Committee and in compliance with the Design Review Guidelines and other requirements set forth in any applicable municipal zoning ordinances. Prior to installation of such landscaping, the Owner shall maintain the portions of such Lot required to be landscaped in a weed-free condition.

(b) If any Owner fails to landscape any portion of his Lot within the time provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install such landscaping improvements as the Association deems appropriate, and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be a Benefited Assessment and shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of assessments.

(c) This Section shall not apply to Declarant; however, this Section shall apply upon commencement of residential occupancy of any Lot containing a Dwelling Unit.

**27. Yard Sales.** Owners may hold "yard sales" to sell personal property of such Owners only in compliance with the following requirements: (i) yard sales shall be limited to two (2) days per year on any Lot; (ii) no yard sale shall commence prior to 6:00 a.m. (MST) or continue after 5:00 p.m. (MST); (iii) no Owner shall post any signs advertising any yard sale anywhere on the Covered Property, except that a temporary sign may be posted on such Owner's Lot on the day that a yard sale is being held and shall be removed immediately thereafter; (iv) if the Association ever adopts standard yard sale dates for the Covered Property, yard sales shall be held only on such dates; and (v) yard sales shall conform with any local ordinance. The Association shall give reasonable notice to all Owners if it adopts standard yard sale dates for yard sales on the Covered Property.

**28. Variances.** Declarant, at its sole discretion, until the expiration of the Declarant Control Period, and thereafter the Board, may grant variances from the Use Restrictions if Declarant or the Board determines:

(a) either that (a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; (b) a change of circumstances has rendered the particular restriction obsolete; or (c) for so long as Declarant has the right to grant such variances, other circumstances warrant a variance in Declarant's sole and absolute discretion; and

(b) the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants.

Any request for a variance shall be made in writing and be accompanied by supporting documentation. Declarant or the Board, as applicable, shall approve or disapprove of requests, in writing, as the particular circumstances may warrant. All decisions of Declarant or the Board shall be final and non-appealable. No variance granted by the Board, if other than Declarant, may be given that reverses or alters a decision made by Declarant unless Declarant consents thereto. If any Use Restriction is adjudged or deemed to be invalid or unenforceable as written by reason of any Applicable Law, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by Applicable Law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.