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When recorded return to:

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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
WESTERN GARDEN**

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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
WESTERN GARDEN**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR WESTERN GARDEN (this “Declaration”) is made as of the 29th day of January, 2025, by **LENNAR ARIZONA, LLC**, an Arizona limited liability company (the “Declarant” or “Lennar”) and **KLLB AIV LLC**, a Delaware limited liability company (the “Landbanker”).

RECITALS

A. Landbanker is the current owner of certain real property located in the County of Maricopa, State of Arizona, legally described in *Exhibit “A”* attached hereto (the “Initial Property”) and incorporated herein by this reference, which is to be commonly known as “Western Garden”. Pursuant to the Option Agreement (hereinafter defined), Declarant has an option to purchase the Initial Property from the Landbanker upon the terms and conditions set forth therein.

B. Declarant desires to develop the Initial Property, together with such portions of the Annexable Property as may be subsequently annexed into the Property and subjected to this Declaration, into a planned residential community.

C. As part of the various stages of development of the Property, Declarant intends, without obligation: (i) that portions of the Property may be dedicated to the public or conveyed to the Association for streets, roadways, drainage, flood control, and general public use and or the Owners’ use; (ii) that Lots within the Property may be sold or otherwise conveyed to Builders for the Construction and sale of single-family homes; and (iii) that Supplemental Declarations may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements applicable to the Lots that are subject thereto.

D. Declarant has formed, or will form the Association for the purpose of benefiting the Property, the Owners, and the Residents, which nonprofit corporation will: (i) hold title to, operate, manage, and maintain any Common Areas and other designated areas in the Property, including the Association Maintained Areas; (ii) establish, levy, collect, and disburse the Assessments and other charges imposed hereunder; and (iii) as the agent and representative of the Members of the Association, and of the Owners and the Residents of the Property, administer and enforce this Declaration and enforce the use and other restrictions imposed on various parts of the Property.

E. Declarant has or will prepare the necessary documents for the organization of the Association and may, without obligation, seek approval of the Property by any Agency whose approval Declarant deems necessary and desirable.

F. In order to cause the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements (the “Covenants”) to run with the Property and to be binding upon the Property and all Owners and Residents thereof, and their successors and assigns,

from and after the date of the Recording of this Declaration, Declarant and Landbanker hereby declare that all conveyances of the Property shall be subject to the Covenants herein set forth.

NOW, THEREFORE, Declarant and Landbanker hereby declare, covenant, and agree as follows:

ARTICLE 1

DEFINITIONS

The following words, phrases, or terms used in this Declaration, including the Recitals, shall have the following meanings:

“Accessory Dwelling Unit” means an attached or detached independent dwelling unit containing a separate kitchen, bathroom, living area and sleeping quarters that has its own separate entrance and is located on the same Lot as the primary Dwelling Unit, including, without limitation, a Next Gen® Suite. As further set forth herein, including, without limitation, the provisions of *Section 5.10* hereof, Accessory Dwelling Units may only be constructed by the Declarant or a Designated Builder, and by another Owner who has obtained the prior written approval of the Board and the Architectural Committee to construct such Accessory Dwelling Unit, and without such approval the same shall not be considered an Accessory Dwelling Unit hereunder.

“Administrative Transfer Fee” has the meaning given to it in *Section 8.7* hereof.

“Affiliate” of a Person shall mean a Person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the Person in question. The term **“control”** means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agency” means the FHA, the VA, the FNMA, the FHLMC, or any other governmental, quasi-governmental or private agency providing residential loan financing, guarantees or other accommodations.

“Alleged Defect” has the meaning given to it in *Section 11.2* hereof.

“Alley-Accessed Lots” means Lots 265 through 371, inclusive, shown on the Phase 1 Plat.

“Annexable Property” shall mean any real property within two miles from any portion of the exterior boundary of the Initial Property. No part of the Annexable Property shall be subject to this Declaration until such portion of the Annexable Property is annexed to the Property pursuant to the terms of this Declaration.

“Annual Assessment” shall mean the Assessments imposed for purposes of paying all Common Expenses of the Association as more specifically provided in *ARTICLE 8* of this Declaration and intended to be the “regular assessments” subject to A.R.S. § 33-1803.

“Applicable Law” shall mean: (i) any and all applicable statutes, laws, rules, regulations, codes and ordinances of the federal government, the State of Arizona, the City, the County, and any other applicable governmental authorities then in effect; and (ii) any reference in this Declaration to a

specific statute, law, rule, regulation, code, and ordinance shall mean the same as amended, modified, superseded, or replaced from time to time.

“Architectural Committee” shall mean the committee to be created pursuant to and as set forth in *ARTICLE 5* of this Declaration.

“Architectural Committee Rules” has the meaning given to it in *Section 5.2* hereof

“Articles” shall mean the Articles of Incorporation of the Association, as the same may from time to time be amended or supplemented.

“Assessable Lot” means a Lot owned by a Person other than a Declarant or an Affiliate of Declarant.

“Assessment” shall mean: (i) the various charges levied and assessed against each Membership pursuant to *ARTICLE 8* hereof, including, but not limited to Annual Assessments, Special Assessments, Deficiency Assessments, Reduced Assessments, Special Service Area Assessments, the Administrative Transfer Fee, Working Capital Contributions, and Reserve Contributions; (ii) any other charge in the nature of an assessment or that is designated as an “Assessment” under this Declaration or the Community Documents; (iii) all charges for late payment of Assessments; and (iv) all reasonable collection fees and costs incurred or applied by the Association, and reasonable attorney fees and costs incurred by the Association, with respect to any Assessments.

“Assessment Lien” has the meaning given to it in *Section 8.2.1* hereof

“Assessment Period” means the period for which the Annual Assessment is to be levied, which shall be the calendar year, except that the first Assessment Period shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

“Association” shall mean the Arizona nonprofit corporation organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers, and duties set forth in this Declaration. Declarant hereby reserves the exclusive right to cause such Association to be incorporated. It is the intent of Declarant that the Association shall be named “Western Garden Community Association”.

“Association Maintained Areas” shall mean: (i) all of the Common Areas; (ii) any public rights-of-way or portions thereof that are required by the County or the City, pursuant to Applicable Law or agreement, to be maintained by the Association; (iii) any areas for which the Association has maintenance, repair, and/or operational responsibility by the terms of this Declaration, any Plat, any Supplemental Declaration, any Declaration of Annexation, or any other applicable real property covenants, by requirements of governmental authorities, or by contract, including, without limitation, the Front Yard Landscaping and the Back Yard Alley Landscaping; or (iv) any other areas designated by the Board. Association Maintained Areas can also include portions of Lots (and Improvements thereon) (i) if designated in *ARTICLE 12* hereof or (ii) if designated by a Supplemental Declaration or any other Recorded document executed by: (a) the Declarant and the Owner of such Lot if not the Declarant or (b) the Association and the Owner of such Lot.

“Association Rules” shall mean the rules and regulations adopted by the Board, as amended and supplemented, pursuant to *Section 6.5* hereof.

“Back Yard Alley Landscaping” shall have the meaning set forth in *Section 12.1.2* hereof.

“Board” shall mean the Board of Directors of the Association.

“Bound Party” shall have the meaning set forth in *Section 11.1.2* hereof.

“Builder” shall mean (a) an Owner that is in the business of constructing and selling completed Dwelling Units to third parties and that intends to construct and sell Dwelling Units on the Lots it owns, (b) any Landbanker that owns one or more Lots, and (c) in the case of any Lots within the Property that are: (i) subject to a Recorded option agreement pursuant to which a Person who would be a Builder if it was the Owner of such Lots has the option to purchase such Lots; (ii) owned by a Person in the business of holding lots without Dwelling Units for investment and selling to Builders; or (iii) owned by a lender to a Builder who has received title pursuant to a foreclosure, trustee's sale or conveyance in lieu of foreclosure or trustee's sale, then in any such event, such Lots shall be deemed to be owned by a Builder under this Declaration. The term Builder includes any Affiliate of a Builder. Declarant shall have the right to execute and Record any documents confirming that a Person is a Builder hereunder and Declarant's determination will be final.

“Bylaws” shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

“Capital Improvements” shall mean those items owned, repaired, or maintained by the Association that individually have an expected useful life of three (3) years or greater and exceed \$1,000.00 in value. Similar items that are less than \$1,000.00 individually, shall be considered Capital Improvements when all such items together, multiplied by the single value of one like item, exceed a total of \$1,000.00.

“Capital Reserve Fund” shall have the meaning set forth in *Section 8.9.1* hereof.

“Certificate of De-annexation” shall mean a written document Recorded pursuant to the provisions of *ARTICLE 14* below for the purpose of de-annexing and removing any portion of the Property from the plan of this Declaration.

“City” shall mean the City of Phoenix.

“Claimant” shall have the applicable meaning or meanings set forth in *ARTICLE 11*.

“Claims” shall have the meaning set forth in *Section 11.1.2* hereof.

“Clear Areas” shall have the meaning set forth in *Section 4.18* hereof.

“Common Area” and **“Common Areas”** shall mean all real property, and any Improvements, amenities, or other improvements thereon, that may from time to time be owned or leased by the Association or otherwise held by the Association for the common use and enjoyment of the Owners. Any real property, and Improvements, amenities (including, without limitation, the Pool), or other improvements thereon, that are described as “common areas” in a Supplemental Declaration, a Declaration of Annexation, or a Plat shall be deemed to be “Common Areas” for the common use and enjoyment of the Owners, as may be provided, and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration. Common Areas may be

abandoned or modified as provided in this Declaration. Common Areas shall not include any Lot the Association acquires by foreclosure of an Assessment Lien unless the Association later agrees to turn such Lot into a Common Area.

“Common Expenses” shall mean the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including, but not limited to, (i) all costs incurred in connection with the acquisition, Construction, Modification, alteration, maintenance, provision, and operation of all land, properties, Improvements, facilities, services, projects, programs, studies, and systems desirable or beneficial to the general common interests of the Property, its Members, and Residents, such as the Maintenance of Association Maintained Areas, obtaining liability, casualty loss, and other insurance required to be maintained by the Association, obtaining or supplying utilities and other public services, providing for communication and transportation within and dissemination of information concerning the Property, obtaining legal, accounting, and management services for the Association, indemnifying officers and directors of the Association, and obtaining or providing streetlights and other services for the protection of the health and safety of the Members and Residents of the Association, (ii) any allocations to reserves determined by the Board to be necessary and appropriate, and (iii) all other financial liabilities of the Association. The foregoing shall not require the Association to incur any particular Common Expense, but is provided to show examples of permissible Common Expenses. Notwithstanding the foregoing, in no event shall Common Expenses include the cost of Construction of initial Improvements to Common Area or Association Maintained Areas completed by or on behalf of a Declarant.

“Community Documents” shall mean, collectively, this Declaration, all Supplemental Declarations, all Declarations of Annexation, the Bylaws, the Articles, the Association Rules, the Architectural Committee Rules, and the Maintenance Standards, as amended and supplemented from time to time.

“Construction” shall mean any de-vegetation, excavation, or grading work of the Property, anything that would affect the drainage of the Property, or any other construction, erection, or installation of any Improvement.

“County” shall mean Maricopa County, Arizona.

“Covenants” shall have the meaning set forth in *Recital F* hereof.

“Declarant” shall mean the above recited Declarant and/or any Person or Persons (1) to whom all or a portion of the rights reserved to Declarant under this Declaration are assigned pursuant to a written, Recorded document expressly assigning such rights and (2) who is specifically named as a Declarant in said Recorded document by the Declarant assigning such rights. Notwithstanding anything contained herein to the contrary, an assignment of all or any portion of Declarant's rights or a sharing of those rights with any Builder shall not deprive the assignor of any protections, indemnities, or freedoms from liability that would otherwise exist under this Declaration if the assignor had maintained all of Declarant's rights hereunder. The term Declarant includes any Affiliate of Declarant. The following rights and privileges of the Declarant under this Declaration shall require the consent of any Landbanker (acting in its sole discretion) of the Declarant for so long as such Landbanker owns any Lots within the Property: (i) an election by the Declarant to terminate the Declarant Control Period, (ii) approval of the termination of the Declaration, pursuant to *Section 15.1*, (iii) the execution of a Supplemental Declaration impacting any Lots owned by such Landbanker, or (iv) any amendment to this Declaration or any Supplemental Declaration impacting Lots owned by such Landbanker.

“Declarant Control Period” shall mean the period commencing upon the Recording of this Declaration and ending on the earlier to occur of: (i) the date upon which the second to last Lot within the Property is conveyed to a Purchaser (as defined below); or (ii) the date that Declarant executes and Records an instrument terminating the Declarant Control Period. If the Declarant Control Period expires, then to the extent permitted by Applicable Law, the Declarant Control Period shall be reinstated automatically upon the annexation of any portion of the Annexable Property solely as to such Annexable Property.

“Declaration” shall mean this Declaration of Covenants, Conditions, Restrictions and Easements, as amended or supplemented from time to time as herein permitted.

“Declaration of Annexation” shall mean a declaration Recorded pursuant to the provisions of *ARTICLE 14* below for the purpose of annexing and/or defining and describing any portion of the Annexable Property to the Property.

“Deed” shall mean a deed or other instrument conveying the fee simple title to any portion of the Property from one Owner to another Owner.

“Deficiency Assessments” shall mean Assessments that are imposed against Lots owned by Declarant or a Designated Builder pursuant to the provisions of *Section 8.3.3* hereof.

“Designated Builder” shall mean any Builder that is designated by Declarant as a “Designated Builder” in a Recorded instrument, a Supplemental Declaration or in a written notice given by Declarant to the Association, and by such designation received an assignment of such rights as may have expressly been permitted in this Declaration and set forth in the instrument making such designation. Notwithstanding the foregoing, any Landbanker of Declarant will automatically be deemed a Designated Builder hereunder without the Recording of any additional instrument unless otherwise agreed pursuant to a Recorded instrument between Declarant and its Landbanker.

“Dwelling Unit” shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family, including, without limitation, any Accessory Dwelling Unit. Subject the provisions and limitations set forth herein, an Accessory Dwelling Unit may be leased to a separate single family who is not occupying the main Dwelling Unit on a Lot.

“FHA” shall mean the Federal Housing Administration, or any successor agency.

“FHLMC” shall mean the Federal Home Loan Mortgage Corporation, or any successor agency.

“FNMA” shall mean the Federal National Mortgage Association, or any successor agency.

“First Mortgage” shall mean a deed of trust or mortgage Recorded against a Lot that has priority over all other deeds of trust or mortgages Recorded against the same Lot.

“First Mortgagee” shall mean the grantee or beneficiary of a First Mortgage.

“Front Yard Landscaping” shall have the meaning set forth in *Section 12.1.2* hereof.

“Gates” shall mean the gated entrances described in *Section 16.16*.

“Hazardous Substances” shall have the meaning set forth in *Section 4.23* hereof

“Improvement” shall mean any of the following: (i) any Dwelling Unit, building, fence, or wall; (ii) any swimming pool, tennis court, basketball goal, backboard or sports apparatus, or playground equipment; (iii) any road, driveway, or parking area; (iv) any trees, plants shrubs, grass, or other landscaping improvements of any type or kind; (v) any statuary, fountain, artistic work, craft work, figurine, or ornamentation of any type or kind; (vi) any other structure of any type, kind, or nature; (vii) any grading, earth work, drainage work, and utility improvements or work, or (viii) any other changes in the physical appearance of the Property including exterior paint, which in any way alters the exterior appearance of any part of a Lot or Common Area.

“Indemnified Persons” shall have the meaning set forth in *Section 6.6* hereof.

“Initial Property” has the meaning given to it in *Recital A* hereof.

“In Good Standing” shall mean that the Owner or Member is not delinquent in the payment of any Assessment or any other amounts owed to the Association, and the Owner and any Resident (or their respective family members, guests, or invitees, are not in violation of the Community Documents.

“Lease” means any agreement whatsoever for the use, occupancy, rental, or lease of all or any portion of a Lot or the Dwelling Unit thereon (or other portion of the Property), including, but not limited to, agreements for any of the foregoing purposes through services such as Airbnb or VRBO (or other similar services), subleases, and licenses.

“Landbanker” shall mean, at any given time, any Person who has acquired some or all of the Property and, pursuant to an option or similar agreement, has agreed to sell or option such Property to a Declarant or a Builder as its “landbanker.” If at any time there is no Landbanker, then any consents or approvals by, or provisions related to, Landbanker, shall not apply. If at any time there is more than one Landbanker, any consents or approvals required of a Landbanker hereunder shall only be required from a Landbanker to the extent such Landbanker’s property is impacted or affected by the approval or consent sought.

“Lot” shall mean a portion of the Property intended for independent ownership and use and designated as a lot on a Plat and, where the context indicates or requires, shall include any Dwelling Unit. Notwithstanding the foregoing to the contrary, if a Lot is owned by the Association and used for open space or other purposes generally benefiting the Owners, it shall be considered part of the Common Area.

“Lot Landscaping” shall have the meaning set forth in *Section 12.1.2* hereof.

“Lots owned by Declarant” and words of similar import, shall mean all Lots with respect to which the Declarant is the Owner and all Lots with respect to which the Declarant has an option to purchase, whether recorded or unrecorded. **“Property owned by Declarant”** and words of similar import, shall mean all Property with respect to which the Declarant is the Owner and all Property with respect to which the Declarant has an option to purchase, whether recorded or unrecorded.

“Maintenance” shall mean care, inspection, maintenance, operation, repair, repainting, restoration, renovation, replacement, and reconstruction.

“Maintenance Standards” shall mean the standards of Maintenance of Improvements situated on Lots established from time to time by the Board or, in the absence of any standards established by the Board, the standards of Maintenance of Improvements situated on Lots generally prevailing throughout the Property or on Common Area.

“Maximum Annual Assessment” shall mean the maximum amount for Annual Assessments allowed by *Section 8.5.6* hereof.

“Member” shall mean any Person holding a Membership in the Association pursuant to this Declaration.

“Member Expenses” has the meaning given to it in A.R.S. § 33-1802; provided that to the fullest extent permitted by Applicable Law, Member Expenses will (1) include costs, expenses, fees and fines levied against an Owner or Resident (or their respective family members, guests, or invitees) pursuant to *ARTICLES 12 or 13* and (2) exclude any Assessments.

“Membership” shall mean the combination of the rights and duties of Members in the Association as set forth in the Declaration, including, but not limited to, the rights granted to Owners and Declarant pursuant to *ARTICLE 7* hereof to participate in the Association.

“Modification” shall mean any addition, alteration, repair, reconstruction, change, replacement or other work that is done to any Improvement or in any way alters the exterior appearance of any Improvement.

“Motor Vehicle” as used in *Section 4.15*, shall have meaning given to it in *Section 4.15* hereof.

“Next Gen® Suite” shall mean a private suite to a Dwelling Unit originally constructed by the Declarant with its own entrance, kitchen/kitchenette, living area, bedroom or multi-use room, and a bathroom. A Next Gen® Suite may or may not include a separate garage and/or laundry space.

“Owner” shall mean (when so capitalized) the Record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple title interest of any portion of the Property. An Owner shall include a purchaser under a contract for the conveyance of real property, subject to the provisions of A.R.S. §§ 33-741, *et seq.*. An Owner shall not include: (i) Persons having an interest in a Lot merely as a security for the performance of an obligation, (ii) a lessee, or (iii) a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract that are intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to A.R.S. 33-801, *et seq.*, the trustor shall be deemed to be the Owner. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

“Option Agreement” shall mean an option or similar agreement between a Person and its Landbanker pursuant to which the applicable Person has the right or option to purchase any portion of the Property from such Landbanker. Without limiting the foregoing, the term Option Agreement will include that certain Option Agreement dated August 24, 2022 by and between Landbanker and Declarant, as amended or modified from time to time, which Option Agreement is evidenced by that

certain Memorandum of Option Agreement Recorded on August 24, 2022, at Document No. 20220666145, as amended or modified from time to time. Notwithstanding any other provision of this Declaration, upon recordation of a termination of the foregoing Memorandum of Option, the Option Agreement shall have no further effect on this Declaration.

“Party Walls” shall have the meaning set forth in *Section 4.8* hereof.

“Person” shall mean a natural person, corporation, partnership, limited liability company, trustee, or any other legal entity.

“Plat” shall mean any subdivision plat now or hereafter Recorded with respect to any portion of the Property. The Plat for the Initial Property is that certain Final Plat for Western Garden Phase 1 recorded September 15, 2023, in Book 1757 of Maps, Page 47 in the office of the Maricopa County Recorder (the **“Phase 1 Plat”**) and that certain Final Plat for Western Garden Phase 2 recorded July 31, 2024, in Book 1814 of Maps, Page 23 in the office of the Maricopa County Recorder (the **“Phase 2 Plat”**).

“Property” shall mean the Initial Property and all portions of the Annexable Property annexed into the Property and subjected to this Declaration pursuant to the provisions of *ARTICLE 14* hereof, together with all Improvements constructed thereon from time to time. The Property shall not be deemed to include any portion of the Annexable Property until such portion of the Annexable Property is annexed into the Property and subjected to this Declaration pursuant to the provisions of *ARTICLE 14* hereof.

“Purchaser” shall mean any Person who becomes the Owner of a Lot except for: (i) the Declarant or a Designated Builder; (ii) a Landbanker; (iii) a Person who purchases a Lot and then Leases it to Declarant or a Designated Builder for use as a model in connection with the sale or Lease of other Lots; or (iv) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

“Record,” “Recording,” or “Recordation” shall mean placing an instrument of public record in the office of the Maricopa County Recorder, Arizona, and **“Recorded”** shall mean having been so placed of public record.

“Recreational Vehicle” as used in *Section 4.15*, shall have meaning given to it in *Section 4.15* hereof.

“Reduced Assessments” shall have the meaning set forth in *Section 8.3.2* hereof.

“Reserve Contribution” shall mean the amount payable by Purchasers to the Association as provided in *Section 8.9.2* hereof.

“Resident” shall mean (i) a lessee or tenant under a Lease, oral or written, of any Dwelling Unit, including an assignee of the lessee's or tenant's interest under a Lease and (ii) each other natural person legally occupying or residing in a Dwelling Unit.

“Special Assessments” shall have the meaning set forth in *Section 8.6.1* hereof.

“Special Service Area” shall have the meaning set forth in *Section 8.6.2* hereof.

“Special Service Area Assessments” shall have the meaning set forth in *Section 8.6.2* hereof.

“Special Service Area Expenses” shall have the meaning set forth in *Section 8.6.2* hereof.

“Street” as used in *Section 4.15*, shall have the meaning given to it in *Section 4.15* hereof.

“Subsidiary Association” shall mean an Arizona nonprofit corporation, its successors and assigns, established for the purpose of administering and enforcing the provisions of any Supplemental Declaration.

“Supplemental Declaration” shall mean a declaration of covenants, conditions, and restrictions (or similar instrument) Recorded against all or a portion of the Property as a supplement to this Declaration setting forth additional or modified provisions for all or such portion of the Property as described in *Section 4.24*.

“Tract” means any portion of the Property that is designated as a Tract on a Plat.

“VA” shall mean the Veterans Administration, or any successor agency.

“Visible From Neighboring Property” shall mean, with respect to any given object, item, and/or Improvement, that such object, item, and/or Improvement is, or would be, either (i) taller than any surrounding wall or (ii) visible to a natural person six feet (6’) tall, standing on the same plane as the object, item, and/or Improvement being viewed at a distance of one hundred feet (100’) or less from the nearest boundary of the property being viewed. The Architectural 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 Architectural Committee shall be binding in that regard, subject to any appeal granted by the Board.

“Working Capital Contribution” shall mean the amount payable by Purchasers to the Association as provided in *Section 8.8.1* hereof.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 General Declaration. This Declaration is established for the purpose of enhancing the value, desirability and attractiveness of the Property. Declarant and Landbanker intend that the Property be developed, used, and enjoyed in accordance with and pursuant to each Plat by subdividing the Property into Lots and Common Area and by selling and conveying Lots to Purchasers. All Lots and Common Area within the Property shall be held, conveyed, hypothecated, encumbered, occupied, built upon, or otherwise used, improved, or transferred in whole or in part, subject to this Declaration; provided, however, that such portions of the Property as are dedicated to the public or a governmental entity for public purposes shall not be subject to the Declaration while owned by the public or the governmental entity, although any restrictions imposed in this Declaration upon the Owners or the Residents concerning the use and maintenance of such portion or portions of the Property shall at all times apply to the Owners and the Residents. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale of the Property, and is established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and every part thereof. This Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant,

Landbanker, the Association, all Owners and Residents, and their successors in interest. By acceptance of a Deed or by acquiring any interest in any portion of the Property, each Person, for himself, his heirs, personal representatives, successors, transferees, and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the terms and conditions now or hereafter imposed by this Declaration. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development, sale, and use of the Property and that all terms and conditions contained in this Declaration shall run with the land and be binding upon all subsequent and future owners, grantees, purchasers, assignees, tenants, and transferees thereof. Each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial and prohibitive to the Association and all Owners. Declarant, its successors, assigns, and grantees, covenant and agree that the Memberships in the Association, and the other rights appurtenant to the Lots and Common Area, shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot or Common Area even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Common Area. The preceding sentence does not limit assignments of the Declarant's rights hereunder or the granting of rights to Designated Builders. All of the foregoing Recitals are hereby incorporated herein by reference.

2.2 Association Bound. Upon the Recording of this Declaration, the covenants, promises, and other requirements contained herein shall be binding upon and shall benefit the Association.

2.3 Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant and Landbanker make no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that the Property is or will be committed to or developed for a particular (or any) use or that, if such real property is once used for a particular use, such use will continue in effect. While Declarant and Landbanker have no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Declarant and Landbanker make no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring any portion of the Property in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by accepting a Deed to any portion of the Property, agrees that neither Declarant, Landbanker, nor any Designated Builder shall have any liability with respect thereto.

2.4 Disclaimer of Implied Covenants. Nothing contained in this Declaration and nothing that may be represented to a purchaser by real estate brokers or salespersons shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any Property subject to this Declaration.

2.5 Views Not Guaranteed. Although certain Lots within the Property at any point in time may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot or Dwelling Unit. Neither Declarant, Landbanker, nor the Association, makes any representation or warranty whatsoever, express or implied, concerning the view that any Lot or Dwelling Unit will have whether as of the date this Declaration is Recorded or thereafter. Any view that exists at any point in time for a Lot or a Dwelling Unit may be impaired or obstructed by further construction within or outside the Property, including by construction of Improvements (including landscaping) by Declarant, construction by third parties (including Builders, other Owners and Residents) and by the natural growth of landscaping. No third party, including any broker or

salesperson, has any right to bind Declarant, Landbanker, any Builder or the Association with respect to the preservation of any view from any Lot or Dwelling Unit constructed thereon or any view of a Lot or Dwelling Unit constructed thereon from any other property.

ARTICLE 3

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

3.1 Easements for Use of Common Areas. Declarant, Landbanker, and every Owner and Resident of the Property shall have a non-exclusive easement for the use and enjoyment in and to the Common Areas that shall be appurtenant to, and shall pass with the title to, every Lot and Common Area subject to the following provisions:

A. The right of the Association to suspend (i) the voting rights of any Member, (ii) the right to use the facilities and other Common Areas by any Member, Owner, and/or Resident and/or (iii) any other rights incidental to Membership (x) for any period during which any Assessment against the Member's Lot remains delinquent; (y) for a period not to exceed sixty (60) days for any infraction of this Declaration, the Association Rules, or any other Community Document; and (z) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period; provided, however, that a Member's rights may only be suspended under procedures sufficient to comply with Applicable Law and provided further that the Association may not restrict an Owner's access to such Owner's Lot.

B. The right of the Association to regulate the use of the Common Areas pursuant to the Association Rules and to prohibit or limit access to certain Common Areas, such as specified landscaped areas.

C. The right of the Association to dedicate, transfer, or mortgage or otherwise encumber all or any part of the Common Areas to any Person for such purposes and subject to such conditions as may be agreed to by the Association, subject to the provisions of *Section 12.4* hereof.

D. The right of the Association to change the use, size, shape, or location of the Common Areas, subject to the provisions of *Section 12.5* hereof.

Notwithstanding the foregoing limitations, if ingress or egress to any Lot is through any part of the Common Areas, in no event shall an Owner or Resident be denied access to such Owner's or Resident's Lot.

3.2 Easements to Facilitate Development. Declarant hereby reserves to itself and its successors and assigns, and to each Designated Builder expressly granted such rights by the Declarant, and their respective contractors, subcontractors, suppliers, engineers, architects, and agents, a non-exclusive blanket easement over and through the Property (excluding the interior of any Dwelling Unit) for access and for the purposes of facilitating the development, marketing, sale and/or Lease of the Property, which shall include without limitation: (a) the Construction of all Improvements on the Common Area that Declarant deems necessary; (b) the Construction of Dwelling Units and other Improvements on Lots owned by Declarant or such Designated Builder; and (c) the storage of supplies of building materials and equipment necessary to construct Improvements on the Common Area and such Lots owned by Declarant or Designated Builder.

Declarant hereby reserves to itself and its successors and assigns, and its respective contractors, subcontractors, suppliers, engineers, architects, and agents the right to: (a) use any Lots owned by Declarant, any Lots leased by Declarant, any other Lot with consent of the Owner thereof, or any portion of the Common Areas as models, management offices, sales offices, a visitors' center, construction offices, customer services offices or sales office parking areas; and (b) install and maintain on the Common Areas, any Lot owned by Declarant, any Lot leased by Declarant, or any other Lot with the consent of the Owner thereof, such marketing, promotional, or other signs as Declarant deems necessary for the development, marketing, sale and/or Lease of the Property owned by Declarant. So long as Declarant is selling and/or marketing the Property owned by Declarant, Declarant shall have the right to restrict the use of any parking spaces situated on the Common Area and to reserve such parking spaces for use by prospective Purchasers of Lots, Declarant's contractors, subcontractors, suppliers, agents or employees, or other Persons engaged in sales, marketing, or Construction activities for or on behalf of Declarant. Declarant shall have the right, during the Declarant Control Period, to expressly grant some or all of the foregoing rights to any Designated Builder it so chooses, including with regard to Lots owned by the Designed Builder.

Neither Declarant, nor any Designated Builder shall exercise any of the rights or easements reserved by or granted pursuant to this *Section 3.2* in such a manner as to unreasonably interfere with the Construction, development, or occupancy of any part of the Property.

3.3 Utility Easements. A nonexclusive, perpetual blanket easement is hereby created over and through the Common Areas (in locations specifically approved by Declarant during the Declarant Control Period or the Board after the termination of the Declarant Control Period) and a limited, specific easement is hereby created over and through those portions of the Property shown as public utility easement areas on any Plat, for the purpose of:

A. Installing, constructing, operating, maintaining, repairing, or replacing equipment used to provide to any portion of the Property any utilities including, without limitation, water, sewer, gas, electricity, telephone, internet, and television service, whether public or private;

B. Ingress and egress to install, construct, operate, maintain, repair and replace such equipment; and

C. Exercising the rights under the easement.

Such easement is hereby granted to any Person providing such utilities or installing, constructing, maintaining, repairing, or replacing equipment related thereto. All utility installations including, without limitation, electrical installations, must be placed underground unless the prior written consent is given by the Declarant during the Declarant Control Period, or by the Board after the termination of the Declarant Control Period. Any pipes, conduits, lines, wires, transformers, and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by Declarant, or where contemplated on any Plat, or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of Construction if approved by Declarant. The Person installing a utility pursuant to this easement shall install and construct, and the Person providing the service shall maintain, repair or replace, the equipment used to provide or meter utilities as promptly and expeditiously as possible in a good and workman like manner free of any mechanics' or materialmens' liens, and shall restore the surface of the land and the improvements situated thereon to their original condition as soon as possible.

During the Declarant Control Period, Declarant may grant, and Declarant may cause the Association to grant, easements and licenses over, under, and across the Common Areas and the Lots (provided that such easements and licenses do not unreasonably interfere with the house on such Lot or otherwise unreasonably interfere with the use of such Lot) as reasonably needed for development of the Property.

3.4 Easement for Maintenance of Association Maintained Areas. To the extent an Association Maintained Area is made subject to this Declaration or Declarant or Landbanker holds title thereto at the time of the Recording of this Declaration, an easement is hereby granted to the Association upon, over, under and across such Association Maintained Areas for the purpose of (a) repairing, maintaining and replacing the Association Maintained Areas and all Improvements thereon and (b) performing all other rights, duties and obligations of the Association under this Declaration. The easement provided in the preceding sentence shall terminate with respect to any Association Maintained Area on the date the Association's responsibilities with respect to such Association Maintained Area terminates.

3.5 Easements for Encroachments. If any Improvement constructed by or for a Builder, Landbanker or Declarant on any Lot or Common Area now or hereafter encroaches on any other portion of the Property by an amount of deviation permitted by customary construction tolerances, and which encroachment is minor or inconsequential in nature and does not materially interfere with the intended use of the burdened property, a perpetual easement is hereby granted to the extent of any such encroachment, and the owner of the encroaching Improvement shall also have an easement for the limited purpose of the Maintenance of the encroaching Improvement.

3.6 Delegation of Use. Any Member may, in accordance with this Declaration and the other Community Documents, delegate its right of use and enjoyment in the Common Areas and facilities thereon to the members of its family, its Residents, its guests or invitees, or its Residents' guests or invitees. Each Member and Resident shall cause the members of its family, its Residents, its guests and invitees, or its Residents' guests and invitees to comply with this Declaration and the other Community Documents and, to the extent permitted by Applicable Law, shall be responsible and liable for all violations and losses caused by such Persons, notwithstanding the fact that such Persons are also fully liable for any violation of the Declaration and the other Community Documents.

3.7 Dedications and Easements Required by Governmental Authority. Declarant hereby reserves to itself and its successors and assigns (including the Association after the termination of the Declarant Control Period), the right to make any dedication and to grant any easements, rights-of-way, and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

3.8 No Merger. The easements granted and reservations made to Declarant and other Owners in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger.

3.9 Assignment of Development Rights/Easements. Declarant, Landbanker and each Designated Builder may make one or more limited temporary assignments of its easement rights under this Declaration to any Person performing Construction or Maintenance on any portion of the Property.

3.10 Easement for Maintenance and Enforcement. Declarant, Landbanker, the Association, and their respective directors, officers, agents, contractors and employees, the Architectural Committee, and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Dwelling Unit) for:

A. the exercise and discharge of their respective powers and responsibilities under the Community Documents;

B. making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements that are or were approved in writing by the Architectural Committee, and that all Improvements are being properly maintained as required by the Community Documents;

C. correcting any condition originating on a Lot or in the Common Area threatening another Lot or the Common Area;

D. performing installation or Maintenance of utilities, landscaping, or other Improvements located on the Lots for which the Association is responsible for Maintenance; or

E. correcting any condition that violates the Community Documents.

3.11 Easement for Drainage. Easements for drainage on the Lots and Common Areas are hereby granted to the Declarant and all other Owners in accordance with the drainage and/or improvement plans prepared on behalf of Declarant and approved by the City. An Owner or Resident shall not modify or change the drainage for such Owner's or Resident's Lot, any other Lot, or any Common Area except as may be permitted by *Section 4.20*.

3.12 Easements Over Private Streets. Every Owner and Resident and each of their respective guests, invitees, and permittees, shall have a right and easement over all private streets within the Property for purposes of ingress and egress to and from the Property and such Owner's or Resident's Lot. Such right and easement shall be appurtenant to and shall pass with the title to every Lot. Such private streets shall include Tracts AA, AAAA, BB, CC, EE, GG, II, MM, NN, QQ, RR, U, VV and Y as shown on the Phase 1 Plat and Tracts LL, MM and NN as shown on the Phase 2 Plat (collectively, the "Private Street Tracts"). The Association shall be responsible to maintain, repair and replace such private streets, which are Common Areas, in accordance with the Plat, this Declaration, and any other Applicable Law, rules and regulations. As set forth in the Plat, there are also easements over the Private Street Tracts dedicated to the public for public utilities, water and sewer, refuse collection, drainage, emergency and service type vehicle access, and vehicular non-access. Tract AAAA on the Phase 1 Plat is subject to that certain Private Sewer Easement among the Association, West 99th Holdings, LLC, Nexmetro Western Garden, LLC, and Quiktrip Corporation dated February 20, 2024, Recorded on February 20, 2024, at Document No. 20240084460, pursuant to which the Association is obligated, at its cost and expense, to repair, operate, and maintain the Sewer Facilities (as defined therein). Such costs and expenses shall be included in Common Expenses and such Sewer Facilities shall constitute Association Maintained Areas.

3.13 Use and Benefit Easements.

A. Certain Lots are burdened by Use and Benefit Easements as set forth in that certain Declaration of Use and Benefit Easements executed by Landbanker and Recorded on November 27,

2023, at Document No. 20230605381, as amended or modified from time to time (the “UBE Declaration”). As used in this Section, the term “Burdened Lot” shall mean each Lot burdened by a Use and Benefit Easement, the term “Benefited Lot” shall mean each Lot benefitted by a Use and Benefit Easement and the term “Easement Area” shall mean the part of each Lot subject to the Use and Benefit Easement described in the UBE Declaration. By way of illustration and not limitation, a portion of Lot 265 is burdened by a Use and Benefit Easement created for the benefit of Lot 266, and Lot 266 is burdened by a Use and Benefit Easement created for the benefit of Lot 267. Thus, Lot 266 is both a Burdened Lot and a Benefited Lot. Some Lots, such as Lot 265, are burdened by a Use and Benefit Easement but are not benefitted by a Use and Benefit Easement. Other Lots, such as Lot 273, have the benefit of a Use and Benefit Easement but are not burdened by a Use and Benefit Easement. In addition to the provisions of this *Section 3.13* regarding the use of the Use and Benefit Easements, the use of the Use and Benefit Easements are subject to the provisions set forth in the UBE Declaration.

B. Each Use and Benefit Easement shall be for the purposes of: (1) the use of the Easement Area by the Owners and Residents of the Benefited Lot and their guests and invitees in accordance with the provisions of this Declaration; (2) the encroachment of any overhang which is attached to the Dwelling Unit located on the Benefited Lot; (3) drainage of storm water or drainage of water from the roof of the Dwelling Unit on the Benefited Lot on to the Easement Area; (4) construction and modification of Improvements on the Easement Area; (5) maintenance of Improvements constructed or installed on the Easement Area; (6) treatment of the soil to eradicate pests; and (7) drainage over, across and upon the Easement Area of water resulting from the normal use of the Benefited Lot.

C. The Owner of the Benefited Lot shall be responsible for the maintenance of all Improvements constructed or installed on the Easement Area which is for the benefit of the Benefited Lot. Except as provided in *Subsection (D)* of this Section, the Owner of a Burdened Lot shall not construct or install any Improvements on or in the Easement Area or enter the Easement Area without the permission of the Owner of the Benefited Lot. The Owner of the Benefited Lot shall promptly repair any damage to any landscaping or other Improvements in the Easement Area which is caused by the Owner of the Benefited Lot.

D. The grant of each Use and Benefit Easement is subject to the right of the Owner of the Burdened Lot to utilize the Easement Area for the installation and maintenance of heating and air conditioning equipment and fixtures serving the Dwelling Unit on the Burdened Lot and for the maintenance of the Dwelling Unit on the Burdened Lot. Except in the event of an emergency, prior to entering an Easement Area for the purposes permitted by this *Subsection (D)*, the Owner of the Burdened Lot shall notify the Owner of the Benefited Lot and shall schedule a mutually convenient time to perform the maintenance. The Owner of the Burdened Lot shall promptly repair any damage to any landscaping or other Improvements in the Easement Area which is caused by the Owner of the Burdened Lot.

E. The Owner of a Burdened Lot shall not be liable for any loss, cost, damage or expense arising out of any accident or other occurrence causing death of or injury to any person and/or damage to any property by reason of the Benefited Lot Owner’s use of the Easement Area, and the Owner of each Benefited Lot agrees to indemnify and hold harmless the Owner of each adjoining Burdened Lot, its heirs, executors, administrators, successors, and assigns for, from and

against each and every loss, cost, damage and expense (including attorneys' fees) arising from such accident or occurrence.

F. Each Use and Benefit Easement shall be appurtenant to the applicable Benefited Lot, shall run with the applicable Benefited Lot and shall inure to the benefit of and be binding upon the Owners and Residents of the applicable Benefited Lot and their respective agents and contractors. The rights and obligations of the Owner of the applicable Burdened Lot shall run with the applicable Burdened Lot and shall inure to the benefit of and be binding upon the Owner of the applicable Burdened Lot and such Owner's heirs, executors, administrators, successors, and assigns.

G. Except for damage caused by the Owner of the Benefited Lot or the Owner of the Burdened Lot, the Association shall maintain the landscaping on the portions of the Easement Areas that are both: (i) visible from the private alleys and streets; and (ii) located outside of walls, fences and gates.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

4.1 Residential Purposes. All Lots and Dwelling Units within the Property shall be used, improved, and devoted exclusively to single-family residential purposes. No gainful occupation, profession, business, trade, or other nonresidential use shall be conducted on any Lot or in any Dwelling Unit; provided, however, that an Owner or any Resident may conduct limited business activities in a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the business activity and all operations thereof comply with and are permitted by all applicable zoning requirements and all other Applicable Law (including, without limitation, receipt and maintenance in good standing of any and all required licenses and permits); (c) the business activity does not involve door-to-door solicitation of other Owners or Residents (other than door-to-door solicitation in connection with political activity conducted between sunrise and sunset and such Owner complies with the identification requirements contained in A.R.S. § 33-1808(G)(2)); (d) the business activity does not generate drive-up traffic or customer, employee, contractor, or client parking; and (e) the business activity is consistent with the residential character of the Property, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of other Owners or Residents, as may be determined in the sole discretion of the Board.

4.2 Animals. No animal, bird, poultry, or livestock may be kept on any Lot other than a reasonable number of generally recognized house or yard pets, and only to the extent that they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. The Board shall have authority to determine (a) what constitutes a reasonable number of generally recognized house or yard pets for a particular Lot and (b) what constitutes a generally recognized house or yard pet, and the Board's determination of both matters shall be final. All house or yard pets permitted under this *Section* shall be confined to an Owner's Lot; except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash and is not permitted to enter upon any other Lot. Any Person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict portions of the Common Area on which dogs are permitted.

No generally recognized house or yard pets shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing, or confinement of any generally recognized house or yard pets shall be maintained so as to be Visible From Neighboring Property; provided, however, that where such structure is Visible From Neighboring Property solely through a “view fence,” such structure shall be permitted provided such structure and any subsequent modifications thereto are approved in writing by the Architectural Committee, as provided in *Section 5.1*. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, for the purposes of this paragraph, whether a particular generally recognized house or yard pet is a nuisance or whether the number of such pets is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein and in this Declaration. During the Declarant Control Period, Declarant may adopt such rules and regulations relating to animals permitted and maintained on the Property. Thereafter, the Board may adopt such rules and regulations relating to animals permitted and maintained on the Property.

4.3 Temporary Occupancy and Temporary Building. No 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 Dwelling Unit, either temporary or permanent. Temporary buildings, mobile homes, or structures may be used during the Construction of a Dwelling Unit on any Lot, in such locations as they are approved in writing by the Architectural Committee in advance provided that they shall be removed immediately after the completion of Construction. This *Section 4.3* shall not prevent Declarant's or a Designated Builder's use of one or more temporary building(s) or mobile home(s) as a construction and/or sales offices on either (i) any Lots owned by Declarant or the Designated Builder or (ii) any Common Area, to the extent such uses are explicitly permitted by Declarant. This *Section 4.3* does not restrict permitted Accessory Dwelling Units.

4.4 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Common Area that shall induce, breed, or harbor infectious plants, diseases, or noxious insects.

4.5 Antennas. Subject to Applicable Law, no antenna, aerial, satellite dish, or other device for the transmission or reception of television, radio, or other (including amateur or ham radio) signals of any kind (collectively referred to herein as “Antennas”) will be allowed outside any Dwelling Unit so as to be Visible From Neighboring Property, unless approved by the Architectural Committee; provided, however, with respect to Antennas and other devices for the reception of video programming signals covered by 47 CFR part 1, Subpart S, Section 1.4000 (or any successor provision promulgated under the Telecommunications Act of 1996) (collectively the “Permitted Antenna”), an Owner may install a Permitted Antenna on his Lot if written notice identifying the type of Permitted Antenna is given to the Association and, to the extent the following can be done without precluding the reception of an acceptable quality signal, the Permitted Antenna is installed so as to be inconspicuous from adjacent Lots and Common Area in a manner that is architecturally compatible with the overall theme of the Property. This provision shall be interpreted in a manner to be consistent with the Telecommunications Act of 1996 and the regulations promulgated thereunder. The Architectural Committee may also permit the placement and operation of one or more aerial satellite dishes or satellite communication systems, and/or other apparatus and equipment for an Antenna or cable system for the benefit of all or portions of the Property.

Subject to any limitations imposed by Applicable Law, any transmission cable for a receiver to a Dwelling Unit must be underground. The Board is hereby vested with the broadest discretion to

enact rules and regulations to implement this *ARTICLE* to conform to state and federal law. The Board may enact rules and regulations that are more restrictive than this *Section 4.5*, if permissible by federal and state law. No Owner may place Antennas on Common Areas or Association Maintained Areas.

4.6 Mineral Exploration. With the exception of (i) wells that may be operated on Common Area, as approved by Declarant or the Board and (ii) construction grading done by or on behalf of Declarant or a Builder, as approved by the Declarant or the Architectural Committee, no portion of the Property may be used in any manner to explore for or to remove any: (a) water; (b) oil, gases or other hydrocarbons of any kind; (c) geothermal energy; (d) minerals of any kind; (e) or any gravel, earth, or any earth substance of any kind.

4.7 Garbage, Trash Containers and Collection. No recycling items, garbage, trash or debris shall be allowed, stored or placed on a Lot or Common Area except in sanitary, covered containers of a type, size, and style that are approved by the Board or supplied by the City. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection, not to exceed a 24-hour period commencing at dusk on the day prior to collection and ending at dusk on the day of collection. All recycling items, garbage, trash and debris shall be regularly removed from each Lot and Common Area and shall not be allowed to accumulate thereon. No incinerator shall be maintained on any Lot or Common Area and no recycling items, garbage, trash or debris shall be burned thereon by open fire or otherwise. The Board shall have the right to require all Owners and Residents to place recycling items, garbage, trash and debris in containers located in areas designated from time to time by the Board or the City.

4.8 Party Walls. Except as hereinafter provided in *Section 12.6* or elsewhere in this Declaration, the rights and duties of Owners with respect to shared walls or fences ("Party Walls") between Lots, or between Lots and Common Areas, shall be as follows:

A. To the extent not inconsistent with this *Section*, the general rules of law regarding Party Walls shall apply.

B. The Owners of contiguous Lots who share a Party Wall shall both have the right to use such Party Wall provided that such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner.

C. Except as otherwise provided in this *Section* or in an applicable Supplemental Declaration or Declaration of Annexation for the portion of the Property subject to such Supplemental Declaration or Declaration of Annexation, the Owners of contiguous Lots who share a Party Wall shall each pay one-half (1/2) of the cost of any modification, maintenance, repair, or replacement of a Party Wall. Either of such Owners may perform any necessary modifications, repairs, maintenance, or replacement of a Party Wall and, in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (1/2) of such cost. The right of any Owner to request or gain contribution from any other Owner under this *Section* shall be appurtenant to the land and shall pass to such Owner's successors in title.

D. Before making any modifications, repairs, maintenance, or replacement of a Party Wall, and in addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, the Owner proposing to modify, repair, maintain, or replace a Party Wall shall first obtain the written consent of the adjoining Owner.

E. Notwithstanding the foregoing, in the event that any Party Wall is damaged or destroyed through the act or omission of an Owner or the Owner's Residents, agents, licensees, guests, invitees, or family members (whether or not such act is negligent or otherwise culpable), such Owner shall be obligated to rebuild and repair the Party Wall at such Owner's sole cost and expense and without cost to the other Owner or Owners who share the Party Wall; provided, however, that this *Section* shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any insurer, Resident, agent, licensee, guest, family member or other Person who otherwise may be liable to such Owner.

F. In the event any Party Wall encroaches upon a Lot or Common Area, a reasonable easement for such encroachment and for the maintenance of the Party Wall shall and does exist in favor of the Owners of the Lots that share the Party Wall, but only to the extent such encroachment is permitted by customary construction tolerances.

G. Declarant hereby reserves to itself and to its successors and assigns and, after the termination of the Declarant Control Period, to the Association, a perpetual non-exclusive easement over, under, upon, and across the Lots for the purpose of repairing or relocating a Party Wall without the consent of the Owners who share the use of the Party Wall.

H. In the event of a dispute between Owners with respect to the modification, repair, rebuilding, or maintenance of a Party Wall, or with respect to the sharing of the cost thereof, either adjoining Owner may submit the dispute to the Board, the decision of which shall be binding.

I. The Association shall have the right, but not the obligation, to perform any work which any Owner fails to do in a timely manner. The Owner(s) responsible for such work shall, upon demand, pay all costs incurred by the Association.

J. Notwithstanding anything contained herein to the contrary, Party Walls constructed by or for Declarant, any Builder, or the Association on Common Areas where the wall or fence does not border on a Lot shall be maintained by the Association, subject to the provisions of *ARTICLE 12* hereof.

4.9 Overhead Encroachments. No tree, root, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, Party Wall, Common Area or other Lot from ground level to a height of eight feet (8') without the prior written approval of the Architectural Committee. No tree, root, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach visibly upon any other Lot.

4.10 Window Coverings. Within ninety (90) days of the initial conveyance of a Lot with a Dwelling Unit constructed thereon to an Owner from Declarant or a Builder (or by a trustee for the benefit of Declarant or a Builder), the Owner or Resident of the Lot shall install permanent window coverings on all street facing windows. In no event shall the interior or exterior of any windows be covered with reflective material such as foil, or with paper, bed sheets, or other temporary coverings. The Architectural Committee shall have the broadest authority to enact rules and regulations relating to such window coverings and all such window coverings must comply with such rules and regulations.

4.11 Garages. No garage, including without limitation Recreational Vehicle garages, tandem garages, garage extensions, or other area originally designed or designated for the parking of any

Motor Vehicle or Recreational Vehicle, shall be converted to a living space, occupied for residential purposes, altered, or used for storage of material or other purposes that would prevent the use of the garage for the parking of at least the number and type of vehicles that the garage, when originally constructed, was designed to accommodate, except that Declarant or a Designated Builder may use the garage in one or more model homes for a sales office and/or a construction office. The interior of all garages situated upon any Lot shall be maintained by the Owners and Residents thereof in a neat and clean condition. Garage doors will be kept closed in accordance with such rules as the Association may adopt from time to time.

4.12 Heating, Ventilating, and Air Conditioning Units. Except as originally installed by or on behalf of the Declarant or approved by the Architectural Committee, no heating, air conditioning, or evaporative cooling units or equipment shall be placed, constructed, or maintained upon the Property including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots by a parapet wall that conforms architecturally with such structure; or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and prior written approval of the Architectural Committee; provided, however, that where such unit or equipment is Visible From Neighboring Property solely through a "view fence," no screening or concealment shall be required.

4.13 Solar Collection Panels or Devices. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, Declarant, and other Persons if they have obtained the prior written approval of the plans by the Architectural Committee, such approval to be subject to the restrictions of Applicable Law, may cause solar collecting panels and devices to be placed, constructed, or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either: (a) such solar panels and devices are placed, constructed, and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed, and maintained in such location(s) and with such means of screening or concealment as the Architectural Committee may reasonably deem appropriate (to the extent permitted by law) to limit, to the extent reasonably possible, the visual impact of such solar collecting panels and devices. The restrictions in this *Section 4.13* shall be subject to any limitations imposed by A.R.S. §§ 33-439 and 33-1816 and other Applicable Law. Each Owner and Resident acknowledges that solar panels and devices installed by or on behalf of Declarant may in some instances be Visible From Neighboring Property. Further, each Owner and Resident acknowledges and agrees that: (y) solar panels and devices installed in compliance with this *Section 4.13* may cause glare which may impact surrounding Owners and Residents and (z) that the Architectural Committee is not responsible for potential glare from such solar panels and devices. Each Owner and Resident further: (i) agrees that the Declarant, a Builder, the Architectural Committee, Landbanker, and the Association shall not be responsible for, or have an obligation to remedy, any glare caused by the installation and operation of any solar panel or device by an Owner or Resident in accordance with this *Section 4.13* and (ii) acknowledges and accepts the location of, and any glare resulting from, solar panels or devices installed by or on behalf of the Declarant or a Builder upon a Lot. An Owner or Resident installing or operating a solar panel

or device shall take reasonable measures to reduce glare; provided, however, that the installing Owner or Resident shall not be required to take any measure which would contravene A.R.S. § 33-1816(B). All solar panels and devices installed by or on behalf of the Declarant shall be deemed approved by the Architectural Committee and in compliance with this *Section 4.13*.

4.14 Basketball Goals. Unless otherwise permitted in the Design Guidelines, permanent and temporary basketball goals shall require the prior approval of the Architectural Committee. In addition, the Association or the Architectural Committee may adopt such other rules and regulations as it deems appropriate relating to the Construction, placement, and use of basketball goals or similar structures or devices. In no event shall a basketball goal be mounted directly to a Dwelling Unit.

4.15 Vehicles and Parking.

A. As used herein; (i) "Motor Vehicle" means a car, van, sport utility vehicle, truck, motorcycle, motorbike, golf cart, all-terrain vehicle, pickup truck, or other similar motorized vehicle; (ii) "Recreational Vehicle" means a bus, mobile home, motor home, travel trailer, tent trailer, trailer, camper, camper shell, boat, boat trailer, personal watercraft, recreational vehicle, or other similar equipment or vehicle; and (iii) "Street" means each public or private street or alley shown on a Plat.

B. Except as otherwise provided herein or by Applicable Law, all Motor Vehicles of an Owner or Resident must be parked within the garage located upon such Owner's or Resident's Lot; provided, however, that if the garage already contains the maximum number of Motor Vehicles for which it was intended to hold, such Motor Vehicles may be parked in the driveway on such Lot, or on the Streets subject to such limitations and rules as the Association may adopt in accordance with Applicable Law. Except as otherwise provided herein or by Applicable Law, Motor Vehicles owned by family members, guests and invitees of an Owner or Resident may be parked in the driveway on a Lot or on the Streets or in designated parking spaces on the Common Areas if such exist, subject to such limitations and rules as the Association may adopt in accordance with Applicable Law. Notwithstanding the foregoing, and except as otherwise provided by Applicable Law, no Motor Vehicle of an Owner or Resident or their respective family members, guests or invitees may be parked on a Street if space for the parking of the Motor Vehicle is available in any of the following areas: (i) the garage situated on the Lot of the Owner or Resident; (ii) the driveway on the Lot constructed as part of the initial Construction of Improvements on the Lot by Declarant or a Builder; or (iii) a driveway expansion constructed on the Lot with the written approval of the Architectural Committee. A garage shall not be converted to living space as set forth in *Section 4.11* hereof.

C. No Motor Vehicle that exceeds eight feet (8') in height or exceeds twenty-four feet (24') in length or that is designed or used for carrying merchandise, supplies, or equipment for commercial purposes shall be parked on a Street or on a driveway or any other part of a Lot so as to be Visible From Neighboring Property, except for:

- (i) the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers, or vendors of the Association, an Owner, or a Resident in the driveway of a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board; and
- (ii) the parking for not more than seventy-two (72) hours within any seven (7) day period of any Recreational Vehicles owned or leased by an Owner or

Resident in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board.

D. No Motor Vehicle of a contractor, subcontractor, supplier, or vendor of an Owner or Resident shall be parked overnight on a Lot, a Street, or the Common Area. No Motor Vehicle shall be parked on any part of the Common Area other than a Street or designated parking spaces.

E. No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Areas. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp, or other material.

F. Notwithstanding any other provision of this *Section* to the contrary, no Motor Vehicle may be parked on a driveway if the length of the Motor Vehicle exceeds the length of the driveway or if the Motor Vehicle encroaches upon or obstructs access across the sidewalk or curb adjacent to the driveway.

G. Notwithstanding the foregoing, no Recreational Vehicle may be parked, kept, or stored on the Common Areas. No Recreational Vehicles may be parked on a Lot if Visible From Neighboring Property except in a garage or behind a Recreational Vehicle gate or double wide gate and in a parking area approved by the Architectural Committee or Board or originally installed by or on behalf of Declarant or a Designated Builder. All other restrictions herein shall apply to Recreational Vehicles to the extent not inconsistent with the foregoing.

H. Owners, Residents, and their guests shall, at all times, comply with all parking markings and signage posted along a Street.

I. The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles and Recreational Vehicles on Lots or the Streets and implementing the provisions of this *Section*. In the event of any conflict or inconsistency between the provisions of this *Section* and the Association Rules, the provisions of this *Section* shall control.

J. The Association shall have the right to tow any Motor Vehicle, Recreational Vehicle, or related equipment parked, kept, maintained, constructed, reconstructed, or repaired in violation of this Declaration or the Association Rules at the cost and expense of the Owner if such vehicle or equipment is parked on any Common Area or otherwise in violation of this *Section 4.15*. The cost incurred by the Association in towing any Motor Vehicle, Recreational Vehicle, or related equipment shall be payable by the Owner of such Lot on demand by the Association.

K. The provisions of this *Section 4.15* will not be construed to prohibit the parking of any Motor Vehicle within the Property to the extent required by A.R.S. §33-1809 or other Applicable Law.

The provisions of this *Section 4.15* shall not apply to vehicles of Declarant, Landbanker, a Designated Builder, or their respective employees, agents, Affiliates, contractors, or subcontractors during the course of Construction activities upon or about the Property.

4.16 Landscaping and Maintenance. Within ninety (90) days of acquiring a Lot with a Dwelling Unit thereon, each Owner (other than a Declarant or a Builder) shall landscape (if not already landscaped) (1) the front yard of such Lot and any public right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and any adjacent street (unless a Common Area lies between the boundary of the Lot and the adjacent street) and (2) if such Lot has a “view fence,” the portion of the side yard and/or back yard that is visible through the view fence. Each Owner (other than a Declarant and a Builder) who is required by the immediately preceding sentence to landscape its Lot shall submit a landscaping plan to the Architectural Committee for review and approval pursuant to *ARTICLE 5* hereof. Each Owner (other than a Declarant and a Builder) shall maintain the landscaping on such Owner's Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street (unless a Common Area lies between the boundary of the Lot and the adjacent street) in accordance with the Maintenance Standards and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping that have been damaged. Landscaping shall be installed under this *Section 4.16* so as to be consistent, in terms of general appearance and level of care and attention, with other normal completed residential landscaping within the Property and within other residential properties in the vicinity of the Property and in accordance with Association Rules.

Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in a neat, clean, and attractive condition, free from weeds, and consistent in appearance with other properly maintained, improved Lots within the Property. In the event any such landscaping is damaged or disturbed as a result of the installation or maintenance of any utility lines, cables, or conduits for the use or benefit of the Owner of the Lot, such Owner shall promptly repair and restore any damage or disturbance to such landscaping in accordance with the landscape plans previously approved by the Architectural Committee.

Notwithstanding the foregoing: (a) the provisions of this *Section 4.16* shall not apply to any Lot or Common Area owned by Declarant or any Builder; and (b) Lot Landscaping shall be maintained pursuant to *Section 12.1.2*.

4.17 Prohibited Uses. No use that is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation, pollution, or that constitutes a nuisance or unreasonable source of annoyance, or that is hazardous by reason of risk of fire or explosion shall be permitted on any Lot. No use that 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, the City, or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot. The provisions of this *Section 4.17* shall not apply to any activity of Declarant, Landbanker, or any Designated Builder or their respective employees, agents, Affiliates, contractors or subcontractors during the course of Construction activities or sales activities upon or about the Property.

4.18 Dust Control. The areas on each Lot that are not improved with buildings (“Clear Areas”) shall be landscaped as provided in *Section 4.16*. After a sale of any Lot by Declarant or any Builder to a Purchaser, until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition, free of weeds and debris, and the Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain his Lot in a manner that

minimizes the possibility of dust being transmitted into the air and over adjacent properties. Nothing in this *Section 4.18* shall be interpreted to require Declarant or a Builder to landscape a Lot before a sale of such Lot by Declarant or a Builder.

4.19 Nuisances; Construction Activities.

A. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property or on any Lot for any time, and no odors shall be permitted to arise or emit therefrom, so as to render the Property or any portion thereof, or activity thereon, unsanitary, unsightly, unreasonably offensive, or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Residents.

B. No loud, noxious or unreasonably offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon that may be, or may become, an unreasonable annoyance or nuisance to Persons or property in the vicinity of such Lot, or that shall unreasonably interfere with the quiet enjoyment of each of the Owners and Residents.

C. Normal Construction activities and parking in connection with the Construction of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during the Construction period, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber, and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any Construction equipment and building materials stored or kept on any Lot during the Construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas.

D. The Board shall have the right to determine, in its sole discretion, whether the provisions of this *Section 4.19* have been violated. Any decision rendered by the Board shall be enforceable and be binding in the same manner as other restrictions in this Declaration.

E. This *Section* shall not apply to Construction activities of Declarant, Landbanker, or their respective employees, Affiliates, contractors, or subcontractors during the course of Construction activities or sales activities upon or about the Property.

4.20 Drainage.

A. No Owner or Resident shall change or modify the drainage established for such Owner's Lot, the Property or any other property adjacent to such Owner's Lot (as shown on the drainage plans for the Property on file with the City) without the consent of the Architectural Committee or the Declarant. Any change or modification shall also be subject to such other consents as may be required by law or Recorded easements.

B. Each Owner shall, at its own expense, maintain the drainage ways and channels within any drainage easements on its Lot in proper condition free from obstruction.

C. The Association shall have the right, after ten (10) days' notice to an Owner, except in the case of emergency (in which case the Association shall have an immediate right of access), to repair or otherwise maintain the drainage way or channel within any drainage easements on said Owner's Lot or Common Area, which the Association, acting through the Board, determines has not

been maintained by the Owner in compliance with this provision. All costs and expenses including, but not limited to, reasonable attorneys' fees and costs incurred by the Association shall be borne by the Owner, and shall be paid to the Association upon demand.

D. For the purpose of this *Section 4.20*, “drainage” means the drainage that exists at the time the overall grading of the Lots, rights-of-way, and Common Areas is completed by or on behalf of Declarant, Landbanker, or any Builder in accordance with plans approved by the City and the Declarant or Architectural Committee, and drainage easements created by the Plat, this Declaration, or other properly granted and Recorded easement. During the Declarant Control Period, and subject to obtaining City approval when required by law, Declarant may change the drainage on (i) Lots and Property owned by Declarant or (ii) Lots and Property owned by the Association.

4.21 Health, Safety, and Welfare. In the event that any uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety, or welfare of any Owner or Resident, the Board may adopt rules restricting or regulating their presence on the Lot or Common Area as part of the Association Rules.

4.22 Leasing; Obligations of Residents.

A. All Residents shall be subject to the terms and conditions of this Declaration and other Community Documents. Each Owner shall cause his, her, or its Residents (and their family members, guests and invitees) to comply with this Declaration, all Supplemental Declarations and other Community Documents and, to the extent permitted by Applicable Law, shall be responsible and liable for all violations and losses caused by such Residents (and their family members, guests and invitees), notwithstanding the fact that such Residents (and their family members, guests and invitees) are also fully liable for any violation of each and all of those documents.

B. An Owner is permitted to separately Lease its Dwelling Unit and any Accessory Dwelling Unit, or a portion thereof, to one or more different Residents. Notwithstanding the foregoing, or anything to the contrary contained herein, no Lease of any portion of a Dwelling Unit or an Accessory Dwelling Unit may be for a period of less than three (3) months, without the prior written approval of the Board. Each Lease must be in writing.

C. Each Owner who enters into a Lease of its Dwelling Unit or an Accessory Dwelling Unit (or a portion thereof), is required to (1) advise the Association within fifteen (15) days of the effective date of the Lease and must include in such notice to the Association the information relating to the Lease set forth in A.R.S. § 33-1806.01(C) and (2) disclose to the Association, within fifteen (15) days after receipt of notice from the Association, such information as the Association may require and/or request and which the Association is permitted to require and/or request by A.R.S. § 33-1806.01 or such other Applicable Law. The Association is authorized to charge a fee for each new Lease (or assignments thereof) as set forth and limited by A.R.S. § 33-1806.01(D) or such other Applicable Law.

D. The provisions of this *Section 4.22* shall not apply to the use of (i) any Lots owned by the Declarant or a Designated Builder (including the Dwelling Units or Accessory Dwelling Units located thereon) or (ii) any Lots leased to the Declarant or a Designated Builder (or the Dwelling Units or Accessory Dwelling Units located thereon), as a model home or for marketing or sales purposes.

4.23 Environmental Protections. No Lot or Common Area, nor any facilities on any Lot or Common Area, shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this *Section*, “Hazardous Substances” shall be deemed to include pollutants or substances defined as “hazardous waste,” “hazardous substances,” “hazardous materials,” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*; the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*; the Arizona Environmental Quality Act, Laws 1986, Chap. 368; in the rules and regulations adopted and guidelines promulgated pursuant to said laws; and any other Applicable Law regulating Hazardous Substances.

4.24 Supplemental Declarations; Additional Property Restrictions. No Supplemental Declarations shall be Recorded by any Owner, Resident, or other Person against any portion of the Property without obtaining the following consents. Prior to the termination of the Declarant Control Period, a Supplemental Declaration must be approved by the Declarant in addition to the Owner(s) of such Property. After the termination of the Declarant Control Period, any Supplemental Declaration must be approved by the Board in addition to the Owner(s) of such Property. The approval of any Person entitled to approve a Supplemental Declaration under this *Section 4.24* shall be evidenced on such Supplemental Declaration, and any Supplemental Declaration that is Recorded without such approval being evidenced thereon shall be null and void. Notwithstanding the foregoing or anything else in this Declaration to the contrary, no Supplemental Declaration Recorded by an Owner shall operate to modify or amend this Declaration but, in the event that such covenants, conditions and restrictions impose restrictions on the use or occupancy of the real property subject to the Supplemental Declaration that are more restrictive than the restrictions set forth in this Declaration, the more restrictive provisions shall prevail. No application for rezoning, variances, or use permits pertaining to any Lot or Common Area shall be filed with any governmental authority by any Person unless the application has first been approved by the Declarant (during the Declarant Control Period), and the Board (after the termination of the Declarant Control Period), and the proposed use otherwise complies with this Declaration.

4.25 Model Homes. The provisions of this Declaration that prohibit nonresidential use of Lots and regulate parking of vehicles shall not prohibit the Construction and Maintenance of model homes by Declarant, Landbanker, or a Designated Builder engaged in the Construction and/or sale of Dwelling Units within the Property and parking incidental to the visiting of such model homes. Any Dwelling Units constructed as model homes shall cease to be used as model homes at any time Declarant or a Designated Builder is not actively engaged in the Construction and/or sale of single-family Dwelling Units within the Property, and no Dwelling Units shall be used as a permanent main model home for the sale of Dwelling Units not located within the Property.

4.26 Repair of Improvements; Reconstruction. 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. In the event any Improvement is damaged or destroyed, then, subject to the approvals required by *ARTICLE 5* hereof, such Improvement shall be promptly repaired or rebuilt or shall be demolished, in which event the area shall be restored to a reasonably safe and presentable condition. In the event any Improvement or other structure is totally

or partially damaged or destroyed by fire, act of God, or any other cause, the Owner shall promptly remove all exterior debris, shall secure the damaged area as needed, including as may be reasonably necessary for the health and safety of others, and shall fully repair the damage and complete reconstruction of the Dwelling Unit or other structure as soon as reasonably possible, and in all events within eighteen (18) months after occurrence of the damage or destruction.

4.27 Signs. No signs whatsoever that are Visible From Neighboring Property shall be erected or maintained on any Lot except:

- A. Signs required by legal proceedings.
- B. A maximum of one political sign (as defined in A.R.S. § 33-1808 or such other Applicable Law) (or such greater number of political signs permitted by City ordinances if the City regulates the number of political signs on residential property) may be placed on a Lot by the Owner of that Lot; provided, however, that no political signs may be displayed pursuant to this *Section 4.27* earlier than 71 days before an election day or more than 3 days after an election day. The size of all such political sign(s) shall not exceed nine square feet in the aggregate.
- C. No more than two (2) identification signs for individual Dwelling Units, each with a face area of seventy-two square inches (72") or less.
- D. "For Sale" and "For Lease" signs temporarily erected in connection with the marketing of any Lot; provided, however, that the Board may adopt additional rules regulating such signs provided such rules comply with the provisions of A.R.S. § 33-1808F and any other Applicable Law.
- E. Signs and notices erected or posted in connection with the provision of building security.
- F. Promotional and advertising signs of any Designated Builder on any Lot approved from time to time in advance and in writing by the Architectural Committee as to number, size, color, design, message content, location, and type.
- G. Cautionary signs regarding children provided that: (i) all such signs are displayed in residential areas only; (ii) all such signs are removed within one hour of children ceasing their activities; (iii) all such signs are displayed only when children are actually present within fifty feet (50') of the sign; (iv) all such signs are no taller than three feet in height; and (v) all such signs are professionally manufactured or produced.
- H. Other signs that are in conformance with the applicable requirements of the City or other applicable governmental agencies and have been approved in advance and in writing by the Architectural Committee as to size, color, design, message content, and location.
- I. Construction job identification signs, Designated Builder identification signs and subdivision identification signs that are in conformance with the applicable requirements of the City or other applicable governmental agencies.

Subject to the limitations above, the Association may adopt reasonable rules and regulations regarding the number, size, placement and manner of display of signs and flags to the extent A.R.S.

§33-1808 or other Applicable Law, does not prohibit such regulation. The provisions of *Section 4.27* shall not apply to the Declarant or any of its activities on the Property.

4.28 Utility Service. No lines, wires, or other devices for communications or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed, or maintained anywhere in or upon any Lot or Common Area unless the same shall be contained in conduits or cables installed and maintained underground, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by or on behalf of Declarant, or any Builder with approval by Declarant or the Architectural Committee, or as may be otherwise approved by Declarant or the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the Construction of buildings or structures.

4.29 Right of Entry. During reasonable hours and upon reasonable prior notice to the Owner or Resident of a Lot or Common Area, any member of the Architectural Committee or the Board, or any authorized representative thereof, shall have the right to enter upon and inspect any Lot or Common Area, and the Improvements thereon, except for the interior portions of any completed Dwelling Units, for the purpose of ascertaining whether or not the provisions of this Declaration or any other Community Documents have been, or are being, complied with, and such Persons shall not be deemed guilty of trespass by reason of such entry.

4.30 Crime and Drug Free Community; Restriction on Offenders. To the extent not prohibited by A.R.S. § 33-1806.01 or other Applicable Law, the Association shall have the right and power to (i) enact rules prohibiting criminal and drug activity on the Property, including the right to assess fines and evict tenants who engage in such activity and (ii) require Residents and Owners to sign reasonable contracts and forms that assure there is no criminal and drug related activity on the Property. Notwithstanding the foregoing to the contrary, neither Declarant nor the Association nor Landbanker shall have any obligation or responsibility for enforcing the law, or liability for the occurrence of such activity on the Property. Further, neither Declarant nor the Association nor Landbanker makes any guaranty that such activity will not occur on the Property. Finally, pursuant to the authority granted to the Association in A.R.S. § 33-1806.01 or other Applicable Law, no Person who is required to be registered pursuant to A.R.S. § 13-3821 or other Applicable Law, and who is classified as a level two or level three offender may be a Resident of any portion of the Property. The foregoing provision shall only be applicable and enforceable to the extent allowed by Applicable Law.

4.31 Sidewalks, Paths, and Walkways. Sidewalks, paths, and walkways within the Property are designed for pedestrian traffic only. No Motor Vehicles, as defined in *Section 4.15*, may be operated on the sidewalks, paths, or walkways within the Property. Horses may not be ridden on sidewalks, paths, walkways, streets, or any other portion of the Property.

4.32 Flags and Flagpoles. Excluding flags used for marketing by Declarant or approved by Declarant for marketing by Designated Builders, and except as set forth in the next sentence, no flags of whatever nature shall be placed on any Lot or Common Area which are Visible From Neighboring Property. The following flags shall be permitted on an Owner's Lot and the Association shall adopt reasonable rules and regulations regarding the placement and manner of display of: (a) The American flag or an official or replica of a flag of the United States army, navy, air force, space force, marine

corps or coast guard by a Member on that Member's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10) and other Applicable Law; (b) the POW/MIA flag; (c) the Arizona state flag; (d) an Arizona Indian nations flag; or (e) the Gadsden flag. Subject to the limitations above, the Association may adopt reasonable rules and regulations regarding the location and size of flagpoles, may limit an Owner or Resident to two wall mounted flagpole holders, may limit an Owner or Resident to displaying no more than two flags at once, and may limit the height of the flagpole to no more than the height of the rooftop of the Owner's home, except that the Association shall not prohibit the installation of a flagpole in the front yard or backyard of a Lot. This provision shall be read and interpreted to be in compliance with A.R.S. § 33-1808(A) and (B).

4.33 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot unless they are not Visible From Neighboring Property.

4.34 Variances. The Board and/or the Architectural Committee, with respect to such matters over which it has control, may in its good-faith discretion grant such variances of the restrictions contained in this *ARTICLE 4* as it shall deem appropriate, so long as the use or condition permitted by such variance does not result, as determined by the Board and or the Architectural Committee in its sole discretion, in an unsafe, insanitary, or aesthetically displeasing condition, or in a substantial departure from the common plan of development contemplated by this Declaration.

4.35 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent or limit the right of Declarant (and its Affiliates, agents, employees, contractors, and subcontractors) to, in its sole discretion, do any one or more of the following: (i) construct, install and maintain production homes, model homes, sales offices and parking incidental thereto, landscaping, and signs, in such manner as Declarant may deem appropriate in its sole discretion; (ii) construct, install or maintain any other Improvements necessary or convenient to the development, marketing, sale and/or Lease of any Lots or Common Area; or (iii) conduct any other activity reasonably required and related to the foregoing, including, but not limited to, the storage and staging of construction equipment, trailers, and materials. Declarant may, in its sole discretion, provide some or all of the same exemptions provided in this *Section 4.35* to a Designated Builder in one or more of the following: a Supplemental Declaration, a separate Recorded document, or written notice given by the Declarant to the Association.

ARTICLE 5

ARCHITECTURAL CONTROL

5.1 Approval Required.

A. Except for the Construction or Modification of an Improvement by or on behalf of Declarant, no Construction or Modification of any Improvement that is Visible From Neighboring Property (including, without limitation, any sheds, trampolines, playgrounds, confinements for animals, or similar structures) or which would affect the drainage of the Property shall be done without the prior written approval of the Architectural Committee, which shall have the authority to regulate the Construction and Modification of such Improvements as more fully set forth herein. Any Owner desiring approval from the Architectural Committee for the Construction or Modification of any Improvement that is Visible From Neighboring Property or which would affect the drainage of the Property shall submit to the Architectural Committee written request for approval specifying in

detail the nature and extent of the type of work that the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications that the Architectural Committee may reasonably request. If the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after receipt of (i) a written application meeting all of the requirements of this Declaration, the Architectural Committee Rules, and the other Community Documents (if applicable) and (ii) any additional information, plans, and specifications requested by the Architectural Committee, the application will be deemed to have been disapproved. Approvals from the Architectural Committee for any Improvement may be subject to commencement and completion of Construction in the time periods reasonably set by the Architectural Committee.

B. The approval by the Architectural Committee of any Construction or Modification of an Improvement shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

C. Notwithstanding anything to the contrary contained in this Declaration, for the new construction of a Dwelling Unit on a Lot, or for rebuilds of a Dwelling Unit on a Lot, and if the Community Documents permit the Association to charge an Owner or Member a security deposit and the Association requires an Owner or Member to pay a security deposit to secure completion of the Owner's or Member's construction project or compliance with approved plans, the rules set forth in A.R.S. § 33-1817(B)(2) shall apply.

5.2 Architectural Committee. An Architectural Committee shall be established to perform the duties and exercise the power and authority imposed on or granted to the Architectural Committee by the Community Documents. Until the termination of the Declarant Control Period, Declarant shall have the sole right and absolute discretion to determine the number of members on the Architectural Committee and to appoint and remove the members of the Architectural Committee. Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee and, in that event, Declarant may require, until the termination of the Declarant Control Period, that specified actions of the Architectural Committee be approved by Declarant in writing before they become effective. In no event shall the Board or the Association have any jurisdiction over architectural or design review matters, the Architectural Committee, or other matters set out in the Architectural Committee Rules until after the first to occur of (i) the termination of the Declarant Control Period or (ii) the Declarant voluntarily relinquishes its rights under this *Section 5.2* in writing (and then only to the extent of such relinquishment). After the termination of the Declarant Control Period, the Board shall determine the number of members on the Architectural Committee, and the members of the Architectural Committee shall be appointed and may be removed by the Board at a Board meeting or by written action in lieu of a meeting. Members of the Architectural Committee need not be Owners or Residents of the Property. In the event the Board does not appoint an Architectural Committee for any reason, the Board shall exercise the authority granted to the Architectural Committee under this Declaration.

Notwithstanding the foregoing, in accordance with A.R.S. § 33-1817(B)(1), the Architectural Committee shall, at all times, include at least one member of the Board who shall serve as chairperson of the Architectural Committee.

The Architectural Committee may adopt, amend, and repeal various guidelines, standards, rules and procedures to be used in governing its operations, rendering its decisions, and in regulating the design and other features of Dwelling Units and other Improvements on the Property that are Visible

From Neighboring Property or which would affect the drainage of the Property (the “Architectural Committee Rules”). The Architectural Committee Rules may include, without limitation, provisions regarding:

- A. the size and height of Dwelling Units and other Improvements;
- B. architectural design, with particular regard to the harmony of the design with the surrounding structures and topography;
- C. placement of Dwelling Units and other buildings;
- D. landscape design, content, and conformance with the character of the Property and permitted and prohibited plants;
- E. requirements concerning exterior color schemes, exterior finishes and materials;
- F. signage;
- G. perimeter and screen wall design and appearance;
- H. time periods for commencement and completion of any approved Construction or Modification; and
- I. rules and regulations governing Construction activities.

Any adoption, amendment, or repeal of the Architectural Committee Rules after Declarant no longer has the right to appoint the Architectural Committee must be approved by the Board.

The Architectural Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Committee to approve or disapprove any Construction or Modification within a specified portion of the Property.

The decisions of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration, but, after the termination of the Declarant Control Period, shall be subject to appeal to the Board as the final arbiter, and the decision of the Board in all cases shall be final and binding.

5.3 Owners In Good Standing. In addition to all other requirements of this *ARTICLE 5*, the Owner of a Lot must be In Good Standing to be eligible to submit plans for any Construction or Modification of any Dwelling Unit, any other Improvements or other work to the Architectural Committee for approval.

5.4 Review of Plans. If the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after an application meeting all of the requirements of this Declaration and of the Architectural Committee Rules, together with any fee required to be paid and any additional information, plans, and specifications requested by the Architectural Committee has been submitted to the Architectural Committee, the submittal will be deemed disapproved. In reviewing plans and specifications for any Construction or Modification of an Improvement that must be approved by the Architectural Committee, the Architectural Committee, among other things,

may consider the quality of workmanship and design, harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish-grade elevation. The Architectural Committee may disapprove plans and specifications for any Construction or Modification to an Improvement that must be approved by the Architectural Committee pursuant to this *ARTICLE 5*, if the Architectural Committee determines that:

A. The proposed Construction or Modification would violate any provision of this Declaration or other Community Documents;

B. The proposed Construction or Modification does not comply with any Architectural Committee Rule or Association Rule;

C. The proposed Construction or Modification is not in harmony with existing Improvements within the Property or with Improvements previously approved by the Architectural Committee but not yet constructed;

D. The proposed Construction or Modification is not aesthetically acceptable;

E. The proposed Construction or Modification would be detrimental to or adversely affect the appearance of the Property; or

F. The proposed Construction or Modification is otherwise not in accord with the general plan of development for the Property.

The Architectural Committee shall comply with A.R.S. § 33-1817 and other Applicable Law. The Architectural Committee may grant variances from the standards set forth in the Architectural Committee Rules if the Architectural Committee determines that the matter subject to the requested variance will not have a substantially adverse effect on the other Owners and Residents and is consistent with the high quality of life intended for the Property.

5.5 Exclusions. The provisions of this *ARTICLE 5* shall not apply to, and approval of the Architectural Committee shall not be required for, the Construction or Modification with respect to any Improvements made by or on behalf of Declarant (or its designated agents or contractors). Further, the Architectural Committee's approval shall not be required for the Construction or Modification of any Dwelling Units or other Improvements by any Designated Builder if: (i) the Declarant specifically grants a Designated Builder such exemption in writing and (ii) the Construction or Modification of such Dwelling Units and other Improvements is done in accordance with plans and specifications that have previously been approved by Declarant or the Architectural Committee in writing.

5.6 Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Architectural Committee as to style, exterior design, appearance, and location, and are not approved for engineering design or for compliance with zoning and building ordinances (or other governmental requirements), and by approving the plans and specifications neither the Architectural Committee, the members thereof, Declarant, Landbanker, the Association, any Owner, nor the Board (nor any committee, officer, director, employee, or agent of any of the foregoing) assumes any liability or responsibility therefor, or for any defect in any structure constructed from the plans and specifications. Neither the Architectural Committee, any member thereof, Declarant, Landbanker, the Association, nor the Board (nor any committee, officer, director, employee, or agent of any of the

foregoing) (subject to any mandatory limitations imposed by A.R.S. § 10-3202, § 10-3851, § 10-3856 or other Applicable Law, and except for an intentional infliction of harm on the Association or its Members, an intentional violation of criminal law, the receipt of a financial benefit to which such Person was not entitled, or an unlawful distribution under A.R.S. § 10-3833 or other Applicable Law), shall be liable to any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective, (b) the Construction, Modification or performance of any work, whether or not pursuant to approval of plans, drawings, and specifications, (c) the development or manner of development of any property within the Property, or (d) the execution and filing of any estoppel certificate pursuant to any Architectural Committee Rules established by the Board, whether or not the facts therein are correct; provided, however, that the action, with the actual knowledge possessed by the Person executing and filing the estoppel certificate was taken in good faith. Approval of plans and specifications by the Architectural Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including but not limited to zoning ordinances and building codes.

5.7 Inspection and Recording of Approval. Any member or authorized consultant of the Architectural Committee, or any authorized officer, director, employee, or agent of the Association, may at any reasonable time, enter without being deemed guilty of trespass, upon any Lot after a reasonable notice as provided herein to the Owner in order to inspect Improvements constructed or being constructed or modified on the Lot to ascertain whether the Improvements have been or are being built in compliance with the Architectural Committee Rules, any applicable provisions of any other applicable Community Documents, and this Declaration. The Architectural Committee also has the right, but not the obligation, to cause an inspection to be undertaken within 30 days of a request therefor from any Owner as to the Owner's Lot and, if the inspection reveals that the Improvements located on the Lot have been completed in compliance with the Architectural Committee Rules, any applicable provisions of any other applicable Community Documents, and this Declaration, the Architectural Committee has the right, but not the obligation, to provide the Owner a notice of approval in recordable form which, when Recorded, shall be conclusive evidence of compliance with the provisions of the Architectural Committee Rules, any other applicable Community Documents, and this Declaration as to the Improvements described in the Recorded notice, but as to the described Improvements only.

5.8 Governmental Approvals. The approval required by the Architectural Committee pursuant to this *ARTICLE 5* shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule, or regulation. The approval by the Architectural Committee of any Construction or Modification of an Improvement pursuant to this *ARTICLE 5* shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms to any applicable building codes or other federal, state, or local law, statute, ordinance, rule, or regulation.

5.9 Fee. The Architectural Committee may establish a reasonable fee from time to time to defer the costs of the Architectural Committee in considering any requests for approvals and requests for variances submitted to the Architectural Committee, which fee shall be paid at the time the request for approval or variance is submitted. The Architectural Committee may also authorize supplemental fees to cover the cost of retaining consultants and other professional services needed to evaluate properly any matter submitted to the Architectural Committee for review.

5.10 Approval of Accessory Dwelling Unit. Accessory Dwelling Units (whether or not Visible From Neighboring Property or contained within a Dwelling Unit) may only be constructed on a Lot by (1) the Declarant, (2) a Designated Builder, or (3) another Owner who has obtained the prior written approval of the Board and the Architectural Committee to construct such Accessory Dwelling Unit. The Board and the Architectural Committee are not required to approve the construction of any Accessory Dwelling Unit (which approval may be given or withheld in their sole and absolute discretion) by any other Owner and may establish such rules as they determine to govern the construction of any Accessory Dwelling Units; provided such rules shall not apply to any Accessory Dwelling Unit constructed by the Declarant or a Designated Builder. Each Owner acknowledges and agrees that any approval by the Board or the Architectural Committee of the construction of an Accessory Dwelling Unit does not mean that existing utility services will support the Accessory Dwelling Unit. Each Owner is solely responsible for determining whether utility services are available to the Accessory Dwelling Unit and the costs associated with extending such utility services. Furthermore, in evaluating any request by another Owner (other than the Declarant or a Designated Builder) for the construction of an Accessory Dwelling Unit, the Board and the Architectural Committee may require such Owner to provide information on how utility services will be extended to the Accessory Dwelling Unit, but the Board and Architectural Committee shall have no obligation to confirm availability or feasibility of the same. Owner is also solely responsible for compliance with the drainage plan and for any impacts the Accessory Dwelling Unit has on the drainage of its Lot. Each Owner further acknowledges and agrees that while Accessory Dwelling Units that are approved in accordance with this Declaration and Dwelling Units may be separately leased (as provided in *Section 4.22*), a Lot, and the Dwelling Unit and Accessory Dwelling Units located thereon, may not be separately sold, mortgaged or otherwise encumbered.

ARTICLE 6

ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be an Arizona nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, this Declaration, and any other Community Documents. The Association shall have all of the common law and statutory power conferred upon nonprofit corporations under Arizona law and all powers necessary and desirable to perform the Association's duties and obligations. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration or this Declaration is terminated.

6.2 Board of Directors and Officers; Management.

A. The affairs of the Association shall be controlled and managed by the Board appointed or elected in accordance with this Declaration, the Articles, and the Bylaws, and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association. The initial directors of the Association shall be designated in the Articles, and such individuals shall serve until their death, resignation, or removal from office.

B. Until the termination of the Declarant Control Period, Declarant shall have the exclusive right to appoint and remove the members of the Board. After the termination of the Declarant Control Period, Declarant has the right but not the obligation to appoint the first Board comprised of Owners, until the first election of Board Members. Thereafter the Board shall be elected annually.

C. The Board may appoint various committees and may appoint a manager or managing agent who shall, subject to the direction of the Board, be responsible for the day-to-day operations of the Association for such compensation as may be agreed upon by the Board and the managing agent. Notwithstanding anything contained in the foregoing or elsewhere in this Declaration to the contrary, Declarant shall have the right to designate and to determine the compensation to be paid to the initial managing agent if such managing agent is retained during the Declarant Control Period.

6.3 Indemnification.

A. To the fullest extent permitted by law, but subject to any mandatory limitations imposed by A.R.S. § 10-3202, A.R.S. §§ 10-3850 through 10-3858, inclusive or other Applicable Law, the Association shall indemnify all Indemnified Persons (as defined in *Section 6.6*) against all expenses and liabilities including, but not limited to, attorneys' fees, witness fees (including expert witness fees), costs and litigation-related expenses reasonably incurred by or imposed upon any such Indemnified Persons in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of their being or having appointed, removed or controlled, or failed to control members of the Board or the Architectural Committee), or any settlement of any such proceeding.

B. Any other agent or employee of the Association may, in the discretion of the Board, also be indemnified by the Association.

C. Notwithstanding anything to the contrary in this Declaration, before any Person is entitled to indemnity pursuant to this *Section 6.3*, the Board must determine, in good faith and in accordance with A.R.S. § 10-3855 that the Person to be indemnified has met the standard of conduct set forth in A.R.S. § 10-3851.

D. The rights of indemnification set forth herein shall be in addition to and not exclusive of all other rights to which the Persons to be indemnified may be entitled at law or otherwise.

E. Any repeal or modification of this *Section 6.3* shall not adversely affect any right or protection of any Persons with respect to anything occurring prior to or at the time of such repeal or modification. The provisions of this *Section 6.3* shall not apply to: (a) any director and/or officer of the Association or any member of the Architectural Committee and/or other committees of the Association in such Person's separate capacity as a Member, Owner, or Resident or (b) the Declarant's and each Designated Builder's obligation to pay Deficiency Assessments as set forth in *Section 8.3.3*.

6.4 Role of Association. The Association is intended to be an “umbrella” organization whose primary responsibilities will include, without limitation, the following:

A. The maintenance of all Association Maintained Areas;

- B. Appointment of individuals to serve on the Architectural Committee pursuant to the provisions of *ARTICLE 5* hereof;
- C. The enforcement of this Declaration and the other Community Documents; and
- D. The approval, coordination, and oversight of any Subsidiary Association.

6.5 The Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the Association Rules, which shall apply to, restrict, and govern the use of any Association Maintained Areas and/or the Lots by any Owner, Member or Resident; provided, however, that the Association Rules shall not be inconsistent with this Declaration, or the Articles or Bylaws of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Association Rules may include, without limitation, the following:

- A. the management, operation and use of the Association Maintained Areas, including, but not limited to, any recreational facilities situated upon the Association Maintained Areas;
- B. minimum standards for the Maintenance of Lots; and
- C. restrictions on the use and Maintenance of Lots.

6.6 Non-Liability of Officials/Personal Liability.

A. To the fullest extent permitted by Applicable Law, including, but not limited to, A.R.S. § 10-3202 (i) no director and/or officer of the Association; (ii) no member of the Architectural Committee and/or other committees of the Association; and (iii) no Declarant and/or its officers directors, managers, members or employees, ((i) through (iii) collectively the “Indemnified Persons”)) shall be liable to any Member, any Owner, the Association, or any other Person for any damage, loss, liability or prejudice suffered or claimed by such Person on account of any decision, course of action, action, inaction, omission, error, negligence, or the like which any such Indemnified Persons (a) made in good faith, (b) made in compliance with applicable standards, if any, imposed by law, and (c) reasonably believed to be within the scope of their respective duties.

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

- (i) No Indemnified Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner or other Person entering upon or making use of any portion of the Property. Each Owner and other Person assumes all risks associated with the use and enjoyment of the Property including but not limited to any recreational facilities upon or within the Property.
- (ii) No Indemnified Persons shall be liable for or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment, or substation adjacent to, near,

over, or on the Property. Each Owner and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property.

- (iii) No provision of this Declaration or any other Community Documents shall be construed or interpreted as creating a duty by any of the Indemnified Persons to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

C. Any repeal or modification of this *Section 6.6* shall not adversely affect any right or protection of any Indemnified Persons with respect to anything occurring prior to or at the time of such repeal or modification. The provisions of this *Section 6.6* shall not apply to: (a) any director and/or officer of the Association or any member of the Architectural Committee and/or other committees of the Association in such Person's separate capacity as a Member, Owner, or Resident or (b) the Declarant's and each Designated Builder's obligation to pay Deficiency Assessments as set forth in *Section 8.3.3*.

6.7 Easements. In addition to the other easements granted hereunder, the Association is authorized and empowered to grant permits, licenses, easements, and rights-of-way upon, across, or under real property owned or controlled by the Association for sewer lines, lift stations, water lines, underground conduits, storm drains, drainage, retention, television cable, electric, gas, and other similar public or private utility purposes, roadways, or other purposes as may be reasonably necessary and appropriate for the development, maintenance or preservation of the Common Areas or for the preservation of the health, safety, convenience, and welfare of the Owners, provided that any damage to a Lot resulting from a grant of any of the foregoing rights shall be repaired by the grantee at its expense.

6.8 Managing Agent. All powers, duties, and rights of the Association, the President of the Board or the Board as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no delegation shall relieve the Association of its obligation to perform any delegated duty. Any agreement for professional management, or any other contract providing for management or maintenance services (excluding utility services) to the Association, shall not exceed a term of five (5) years, subject to renewal by agreement of the parties for successive one (1) year periods, and shall further provide for termination by the Association with or without cause and without payment of a termination fee upon thirty (30) days written notice.

6.9 Designated Service Providers. Subject to compliance with all Applicable Law, the Board shall have the authority to designate preferred providers of services within the Property when the Board deems it necessary or desirable to do so for reasons of obtaining better rates or terms of service or for other reasons deemed reasonable by the Board. If the Board makes such a designation, the Association may enter into an agreement with the designated service provider, and the cost of services purchased by the Board shall be considered a Common Expense of the Association and shall be included in the Assessments payable by each Owner; provided, however, that the Board may allocate such costs between improved and unimproved properties, as a Special Service Area Assessment, in such a manner as the Board deems equitable. Notwithstanding any designation and negotiation with a service provider, each Owner may contract separately with the designated service provider to receive services in excess of those provided to the Property pursuant to the service provider's agreement with the Association, and the cost of the additional services shall be paid

separately by the Owner and shall not be an Assessment under this Declaration. Any service provider designated by the Board pursuant to this *Section 6.9* shall have an easement over the Common Areas to the extent necessary or convenient for the efficient delivery of the designated service.

ARTICLE 7

MEMBERSHIPS AND VOTING

7.1 Owners of Lots; Identity of Members. Each Owner of a Lot shall automatically be a Member of the Association, and shall remain a Member of the Association until such time as ownership ceases for any reason, at which time the Owner's Membership in the Association shall automatically cease. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable, and joint ownership or ownership of undivided interests in any real property that establishes a Membership shall not cause there to be more Memberships than the number established for purposes of this *Section 7.1*. There shall be one (1) Membership for each Lot within the Property as shown on any Plat. Notwithstanding the fact that Owners of Common Areas shall be subject to the portions of this Declaration that are specifically applicable to the Common Area, Owners of Common Areas shall not be Members of the Association, except to the extent of their ownership of a Lot. Membership may be evidenced by an official list of Owners, which list shall be kept by the Association and as provided by Applicable Law.

7.2 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one Owner and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void. Except as prohibited by law, during the Declarant Control Period all voting rights of the Members shall be jointly vested in the Declarant and its Landbanker (who shall jointly have the right to approve and disapprove such matters as more fully set forth herein) and no Member shall be entitled to vote. Notwithstanding the foregoing, such voting rights shall no longer be vested in Landbanker, nor shall Landbanker have the right to approve or disapprove any such matters, at such time as Landbanker no longer owns any Lots within the Property. After the termination of the Declarant Control Period, each Member shall have one (1) vote for each Lot owned by such Member.

7.3 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the other Community Documents.

7.4 Transfer of Membership. Except as otherwise expressly provided herein with respect to the Declarant, the rights and obligations of an Owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership of the Lot. Except for a transfer by a Declarant, Landbanker or a Builder, a transferor of a Lot must notify the Board of the transfer in

writing, and remains liable for all obligations hereunder until the transferor so notifies the Board. A transfer of ownership to a Lot may be effectuated by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of Record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of the Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. The foregoing restrictions shall not apply to any transfer by the Declarant of its rights under this Declaration or its designation of a Designated Builder.

ARTICLE 8

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Assessment Right and Personal Obligation of Assessments.

8.1.1 Right of Assessment. In order to provide funds to enable the Association to meet its obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board as more fully set forth in this *ARTICLE 8* and elsewhere in the Declaration. Subject to *Section 8.3*, each Owner, by acceptance of a Deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Lot.

8.1.2 Obligation to Pay Assessments. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using such Owner's Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to such Owner's Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner, and in addition to the Assessment Lien which shall run against a Lot, the obligation to pay Assessments is also the personal obligation of the Person who was the Owner of such Lot at the time such Assessments arose with respect to such Lot. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association, the Board, or Declarant to take some action or perform some function required to be taken or performed by the Association, the Board, or Declarant under this Declaration or the other Community Documents.

8.1.3 Cessation of Obligation to Pay Assessments. Upon transfer by an Owner of fee title to such Owner's Lot by recorded deed, and with written notice to the Association (which written notice shall not be required for transfers by any Declarant, Landbanker or a Builder), such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot.

8.2 Lien for Assessments; Late Charges; Remedies.

8.2.1 Assessment Lien. To the fullest extent permitted by Applicable Law, including, without limitation, A.R.S. §§ 33-1802, 33-1803, and 33-1807, a lien is hereby created and established in favor of the Association against each Lot that shall secure payment of all present and future (i) Assessment, (ii) charges for late payment of Assessments; and (iii) reasonable collection fees and costs incurred or applied by the Association, and reasonable attorney fees and costs incurred by the Association, with respect to any Assessments (the "Assessment Lien"). The Assessment Lien is a charge on the Lot and is a continuing lien upon the Lot against which each such Assessment is made.

8.2.2 Late Charges; Collection Costs; Interest. Each Owner failing to pay an Assessment within fifteen (15) days of the date that the Assessment is due (or such longer time period as the Board may specify from time to time) shall also pay a late charge as set by the Board from time to time. Until changed by the Board, the initial late charge shall be the greater of (i) fifteen dollars (\$15.00) per month or (ii) ten percent (10%) of the unpaid Assessment. The fifteen-day delinquency period and late charges shall be subject to any limitations imposed by A.R.S. § 33-1803 or other Applicable Law. The Owner shall also pay all reasonable collection fees and costs incurred or applied by the Association and reasonable attorney fees and costs incurred by the Association in attempting to collect or otherwise with respect to such Assessments or other unpaid amounts. In addition, subject to any limitations imposed by Applicable Law, the Board may, if it so elects, charge interest (not to exceed ten percent (10%) per annum) on any Assessment or any installment of any Assessment that is not paid within fifteen (15) days (or such longer time period as the Board may specify from time to time) of the date that the Assessment is due.

8.2.3 Foreclosure of Assessment Lien; Judgment Lien for Member Expenses; Ownership by Association; Other Remedies. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments and any other sums due to the Association in any manner allowed by law, including, but not limited to, the following:

A. Foreclosure of Assessment Lien. Subject to the provisions of A.R.S. § 33-1807, an Assessment Lien may be foreclosed in the manner provided by law for the foreclosure of mortgages (including the right to recover any deficiency) and any other Applicable Law. To the extent required by A.R.S. § 33-1807, prior to filing a foreclosure action the Association's Board of Directors will exercise reasonable efforts to communicate with the Owner of the Lot and will offer a reasonable payment plan for payment of the delinquent Assessments. The sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of a First Mortgage, purchase at foreclosure sale or trustee sale of a First Mortgage, or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure of a First Mortgage, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot that became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot that accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot. The Association shall have the power to bid for any Lot at any sale to foreclose the Assessment Lien on the Lot, and to acquire and hold, lease, mortgage, and convey the same. During the period any Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Areas.

B. Judgment Lien for Member Expenses. To the extent provided by A.R.S. § 33-1807 (1) the Association will only have a lien for Member Expenses after the entry of a judgment in a civil suit for Member Expenses from a court of competent jurisdiction and upon the Recording of that judgment and (2) a judgment lien for Member Expenses cannot be foreclosed by the Association and is effective only upon the conveyance of any interest of the Lot. The Association has the right, at its option, to file a civil suit for the collection of any delinquent Member Expenses.

C. Suspension of Rights. The Board may suspend, for the entire period during which a delinquent Assessment or other amount due to the Association remains unpaid, the obligated Owner's

voting rights and rights to use and enjoy the Common Areas, in accordance with procedures that conform to Arizona law except that in no event shall the Board prevent access to such Owner's Lot.

D. Collection of Delinquent Amount. Subject to any limitations imposed by Applicable Law, the Association shall be entitled to maintain suit to recover a money judgment for unpaid Assessments without a foreclosure of its Assessment Lien for such Assessments, and the same shall not constitute a waiver of the Assessment Lien for such Assessments.

E. Limitations. The provisions of this *Section 8.2.3* shall be subject to any limitations imposed by A.R.S. §§ 33-1802, 33-1803, 33-1807 or other Applicable Law.

8.2.4 Notice and Perfection of Assessment Lien. As set forth in A.R.S. § 33-1807(F), the Recording of this Declaration constitutes record notice and perfection of the liens established hereby, including, but not limited to, the Assessment Lien, and further Recordation of any claim of an Assessment Lien or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of liens in such circumstances as the Board may deem appropriate).

8.2.5 Priority of Assessment Lien. Subject to A.R.S. § 33-1807 or other Applicable Law, the Assessment Lien shall have priority over all liens or claims except for: (i) liens and encumbrances Recorded before the Recording of this Declaration; (ii) liens for real estate taxes and other governmental assessments and charges against the Lot; and (iii) any Recorded First Mortgage on the Lot or a seller's interest in a first contract for sale pursuant to A.R.S. §33-741, *et seq.* Recorded prior to the Assessment Lien.

8.3 Declarant's Exemption from Assessments; Reduced Assessments for Designated Builders; Deficiency Assessments and Designated Builder's Subsidy.

8.3.1 Declarant's Exemption from Assessments. Lots owned (or deemed owned) by Declarant shall not be subject to any Assessments, but Declarant shall be required to pay to the Association Deficiency Assessments as provided and determined in *Section 8.3.3*. Upon termination of the Declarant Control Period, Declarant shall no longer be required to pay any Deficiency Assessments.

8.3.2 Reduced Assessments. During the Declarant Control Period, each Designated Builder shall pay Annual Assessments with respect to Lots owned (or deemed owned) by such Designated Builder in an amount equal to twenty-five percent (25%) of the Annual Assessment payable by other Owners other than Declarant ("Reduced Assessments"). Each Designated Builder shall be required to pay to the Association Deficiency Assessments as provided and determined in *Section 8.3.3*. Upon termination of the Declarant Control Period, Designated Builders shall no longer be required to pay any Deficiency Assessments. After termination of the Declarant Control Period, all Designated Builders shall pay Annual Assessments as set forth in *Section 8.5*.

8.3.3 Deficiency Assessments/Designated Builders' Subsidy. Subject to the terms of this *Section 8.3.3*, during the Declarant Control Period, Declarant and each Designated Builder, as applicable, shall pay to the Association such amounts as may be necessary to make up any budget shortfalls of the Association resulting from the Reduced Assessments paid by the Designated Builders and the fact that Declarant is exempt from the payment of Assessments with respect to any Lots owned by Declarant ("Deficiency Assessments"). Such deficiencies shall be allocated between

the Declarant and the Designated Builders on a pro rata basis according to the number of Lots owned by Declarant and each Designated Builder, and number of days owned, during the calendar year (or if applicable, the Assessment Period) for which there is a deficiency. Notwithstanding the foregoing or anything to the contrary contained in this Declaration, in no event shall Declarant or any Designated Builder be obligated to pay, during any given calendar year (or if applicable, the Assessment Period), any Deficiency Assessment for a Lot to the extent payment of the same would cause the total amount of Deficiency Assessments, Reduced Assessments and Annual Assessments paid with respect to such Lot to exceed the amount of the full Annual Assessment (or applicable prorated portion based on the number of days said Lot was owned by Declarant or a Designated Builder) that would have been owed if such Lot was owned by an Owner other than a Declarant or a Designated Builder. In the event of any conflict between this *Section 8.3.3* and any other paragraph of this Declaration, this *Section 8.3.3* shall control. Notwithstanding anything to the contrary contained in this Declaration, despite the fact that Annual Assessments may not have commenced with respect to Assessable Lots pursuant to *Section 8.5.2*, each Designated Builder, from the date such Designated Builder becomes an Owner of a Lot, shall be obligated to pay its pro rata share of Deficiency Assessments for all Lots owned by such Designated Builder, provided that such Designated Builder shall receive a credit against its obligation to pay Deficiency Assessments in the amount of any Reduced Assessments paid with respect to the Lots owned by such Designated Builder.

8.3.4 Declarant Right to Pay Deficiency Assessments of Designated Builders. If any Designated Builder fails to pay to the Association any Deficiency Assessment owed by such Designated Builder (the “Non-Paying Designated Builder”) within thirty (30) days after receipt of written notice from Declarant, Declarant shall have the right, but not the obligation, to pay such Deficiency Assessments owed by the Non-Paying Designated Builder directly to the Association, and upon such payment the paying Declarant shall be subrogated to all of the Association’s rights and remedies under this Declaration and Applicable Law against the Non-Paying Designated Builder for non-payment of the Deficiency Assessments. In addition to all of its other rights and remedies hereunder, the paying Declarant shall be entitled to Record a separate notice of lien against any Lots owned by the Non-Paying Designated Builder and upon such Recording, a separate lien shall attach to the Non-Paying Designated Builder’s applicable Lots in the amount of the Deficiency Assessments owed by the Non-Paying Designated Builder that were paid by the paying Declarant. The lien shall include interest at a rate of ten percent (10%) per annum on the amount due, all costs of collection, attorneys’ fees and any other amounts provided or permitted by law. Such lien may be enforced by suit, judgment and foreclosure in the same manner as mortgages on real property are foreclosed under the laws of the State of Arizona, which shall include the right of non-judicial foreclosure if permitted under the laws of the State of Arizona.

8.3.5 Landbanker’s Assessment Liability. Notwithstanding anything herein to the contrary, for so long as a particular Landbanker’s Option Agreement is in effect and has not been terminated, (1) all Lots owned by Landbanker shall, for purposes of Assessments, be deemed owned by the Person that has the option to acquire such Lots under the Option Agreement (e.g., all Lots owned by Declarant’s Landbanker will be deemed owned by Declarant for so long as the applicable Option Agreement is in effect and has not been terminated) and (2) Landbanker shall not be obligated to pay any Assessments hereunder. Upon termination of the Landbanker’s Option Agreement, if Landbanker then still owns any Lots, Landbanker shall be liable for all Assessments applicable to such Lots based on Landbanker’s status under this Declaration and that accrue from and after the date of termination of the applicable Option Agreement.

8.4 Due Dates; Confirmation of Payment.

8.4.1 Due Date and Payment of Assessments. Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed “paid” when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed “paid” and shall remain due and payable).

8.4.2 Confirmation of Payment. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association or the Association's manager setting forth whether the Assessments payable with respect to a specific Lot have been paid. A properly executed certificate of the Association as to the status of the payment of Assessments with respect to any such Lot shall be binding upon the Association as to the matters described therein.

8.5 Purpose of Annual Assessments; Computation of Annual Assessments; Annual Budget.

8.5.1 Right to Impose Annual Assessments. The Association shall have the right to impose Annual Assessments for the purpose of paying all Common Expenses of the Association.

8.5.2 Commencement of Annual Assessments. The Annual Assessments shall commence as to all Assessable Lots on the first day of the calendar month following conveyance of the first Lot to a Purchaser. The initial Annual Assessment shall be prorated according to the number of months remaining in the calendar year within which the Annual Assessments actually commence.

8.5.3 Preparation of Budget. At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments or other amount to be generated through Assessments against the Lots. The Annual Assessments may include contributions to the Capital Reserve Fund in addition to other contributions to the Capital Reserve Fund allowed or required by this Declaration. Based on the budget adopted by the Board, the Board shall assess against each Assessable Lot an Annual Assessment. The Annual Assessment shall be the same for each Assessable Lot except as expressly provided herein with respect to the Declarant, Designated Builder, and any Landbanker. When adopted by the Board, the Board shall make the annual budget available to the Members of the Association. If the Board fails to adopt a budget for any Assessment Period at least thirty (30) days in advance, then the current Annual Assessment amount shall apply until the Board establishes the Annual Assessment for each subsequent fiscal year.

8.5.4 Notice of Annual Assessment. The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board and not relieve any Owner from its obligation to pay the Annual Assessment.

8.5.5 Inadequate Funds. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are or will become inadequate to meet all Common

Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, the Board may amend the budget and increase the Annual Assessment for that Assessment Period (subject to such limitations as may be imposed by A.R.S. § 33-1803 or other Applicable Law) and the revised Annual Assessment shall commence on the date designated by the Board.

8.5.6 Maximum Annual Assessment. The Annual Assessments shall not at any time exceed the Maximum Annual Assessment as determined in accordance with this *Section 8.5.6*. Unless a greater Maximum Annual Assessment is approved by a majority of all Members of the Association, the Maximum Annual Assessment for any fiscal year, after the first fiscal year, shall be equal to the Annual Assessment levied in the immediately preceding fiscal year increased by twenty percent (20%). Increases in Annual Assessments shall be subject to any limitations imposed by A.R.S. § 33-1803 or other Applicable Law.

8.6 Special Assessments and Special Service Area Assessments.

8.6.1 Special Assessments. In addition to the Annual Assessments, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any Construction or Modification of one or more Capital Improvements owned by the Association or for defraying other extraordinary expenses (collectively, “Special Assessments”); provided, however, that such Special Assessments must be approved by at least two-thirds (2/3rds) of the votes entitled to be cast by the Members voting in person or by absentee ballot at a meeting of the Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners of Assessable Lots and are secured by the Assessment Lien to the extent permitted by Applicable Law.

8.6.2 Special Service Area Assessments. If the Board determines, in its sole and absolute discretion, that certain services provided, or to be provided, by the Association benefit any Lots in a disproportionate manner, or if a Member or Members owning one or more Lots contract with the Association for the Association to provide particular services with regard to such Lots, the Board shall be entitled to assess each special service area (each, a “Special Service Area”) a distinct assessment against the Memberships appurtenant to the Lots benefitted by such services as determined by the Board (“Special Service Area Assessments”). Owners receiving benefits in a disproportionate manner may be located in more than one Special Service Area and, therefore, subject to more than one Special Service Area Assessment. The expenses incurred by the Association to deliver the special services to a Special Service Area (the “Special Service Area Expenses”) shall be assessed solely against the Lots which are benefitted by the special services provided to the Lots located in that Special Service Area. No Special Service Area Expense shall be used in computing the Annual Assessments to be levied pursuant to *Section 8.5* of this Declaration. Special Service Area Assessments shall be levied against the Lots located in the particular Special Service Area at a uniform amount per Membership determined in the sole discretion of the Board, with the objective of providing to the Association all funds required to pay all Special Service Area Expenses incurred by the Association in providing the operational, maintenance and other services to the particular Special Service Area. Special Service Area Assessments shall commence upon the date established by the Board. If the Board determines during any assessment period that Special Service Area Assessments with respect to any Special Service Area are, or will become, inadequate to pay for all Special Service Area Expenses pertaining to that Special Service Area for any reason including, without limitation, nonpayment of Special Service Area Assessments by Members, the Board may increase that Special Service Area Assessment for the assessment period and the revised Special Service Area Assessment shall commence on the date designated by the Board. The amount

of any Special Service Area Assessments shall be determined in a manner consistent with the Board's determination of the respective benefits each Lot receives from such special services. Special Service Area Assessments shall not be subject to the Maximum Annual Assessment limitations set forth in *Section 8.5.6*, but are secured by the Assessment Lien to the extent permitted by Applicable Law.

8.7 Administrative Transfer Fee. Each Purchaser who acquires a Lot with a completed Dwelling Unit constructed thereon shall pay to the Association immediately upon becoming the Owner of such Lot a transfer fee in the amount established from time to time by the Board, which shall be used by the Association to defray the administrative and other costs and expenses incurred by the Association to evidence, process, and document the change in ownership of the Lot (the "Administrative Transfer Fee"). The Administrative Transfer Fee may be in addition to amounts charged pursuant to A.R.S. § 33-1806 or other Applicable Law for information provided pursuant to such section or law. The Administrative Transfer Fee shall be used by the Association in compliance with this Declaration and any Applicable Law. Payments made pursuant to this *Section 8.7* shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the Annual Assessment or any other Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this *Section 8.7* shall not be used in calculating the Maximum Annual Assessment pursuant to *Section 8.5.6* hereof. Administrative Transfer Fees payable pursuant to this *Section* are secured by the Assessment Lien, to the extent permitted by Applicable Law, and are in addition to any other fees payable pursuant to the Community Documents and any other fees payable at the close of escrow. The Board may, from time to time, increase or decrease the amount of the Administrative Transfer Fee and, during the Declarant Control Period, must obtain the consent of the Declarant. The Administrative Transfer Fee is intended to be imposed upon each conveyance or transfer of a Lot with a completed Dwelling Unit thereof.

8.8 Working Capital Fund.

8.8.1 Payment of Working Capital Contribution. To help ensure that the Association shall have adequate funds to meet its expenses, to perform its obligations under this Declaration, and/or to purchase necessary equipment or services, each Purchaser who acquires a Lot with a completed Dwelling Unit constructed thereon shall pay to the Association immediately upon becoming the Owner of such Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for such Lot (the "Working Capital Contribution"). The Working Capital Contribution shall be used by the Association in compliance with this Declaration and any Applicable Law. Payments made pursuant to this *Section 8.8.1* shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the Annual Assessment or any other Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this *Section 8.8.1* shall not be used in calculating the Maximum Annual Assessment pursuant to *Section 8.5.6* hereof. Working Capital Contributions payable pursuant to this *Section* are secured by the Assessment Lien, to the extent permitted by Applicable Law, and are in addition to any other fees payable pursuant to the Community Documents and any other fees payable at the close of escrow. The Board may, from time to time, increase or decrease the amount of the Working Capital Contribution and, during the Declarant Control Period, must obtain the consent of the Declarant.

8.8.2 Exemption from Working Capital Contribution. No Working Capital Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, a

family limited liability company, or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a Person in which the grantor 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 Contribution, in which event a Working Capital Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, *et seq.*; or (f) to the extent set forth in A.R.S. § 33-442(E), any transfers of title between the parties prescribed in A.R.S. § 11-1134(B)(3) or (7). As of the date of the recording of this Declaration, (1) A.R.S. § 11-1134(B)(3) covers transfers of title involving only nominal actual consideration for the transfer of residential property between: (i) Husband and wife or ancestor of the husband and wife, (ii) Parent and child, including natural or adopted children and their descendants, (iii) Grandparent and grandchild or (iv) Natural or adopted siblings; and (2) A.R.S. § 11-1134(B)(7) covers transfers of title for no consideration or nominal consideration: (i) by a subsidiary to its parent or from a parent to a subsidiary; (ii) among commonly controlled entities; (iii) from a member to its limited liability company or from a limited liability company to a member; (iv) from a partner to its partnership; (v) from a partnership to a partner; (vi) from a joint venturer to its joint venture; (vii) from a joint venture to a joint venturer; (viii) from a trust beneficiary to its trustee; (ix) from a trustee to its trust beneficiary; or (x) from any of the entities in subdivisions (2)(i) through (2)(ix) above to a single purpose entity in order to obtain financing.

8.9 Capital Reserve Fund; Capital Reserve Fee; Reserves.

8.9.1 Establishment of Capital Reserve Fund. The Board shall establish reserves for the future periodic maintenance, repair, or replacement of the major components of the Association Maintained Areas. The reserves may be funded from Annual Assessments, Special Assessments, the Working Capital Contributions paid pursuant to this Declaration, the Reserve Contributions paid pursuant to this Declaration, or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board in a separate bank account (the account and all such funds therein shall be collectively referred to herein as the "Capital Reserve Fund") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Unless the Association is exempt from federal or state taxes, all reserves shall be accounted for as contributions to the capital of the Association and segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association. Funds in the Capital Reserve Fund may only be used to pay costs and expenses related to the periodic maintenance, repair, and replacement of the Association Maintained Areas, unless the expenditure of any or all of the funds in the Capital Reserve Fund for other purposes is approved by the vote of Owners holding at least two-thirds (2/3rds) of the votes in the Association. The Board may obtain a reserve study and updates thereafter as reasonably determined necessary by the Board. The Board may modify the budget in accordance with the findings of any reserve study. Neither the Board, nor the Declarant, nor Landbanker shall be liable to the Association, the Members, the Owners, or the Residents, if the reserves collected are inadequate.

8.9.2 Reserve Contribution. Except as otherwise provided in this *Section*, each Purchaser who acquires a Lot with a completed Dwelling Unit constructed thereon shall pay to the Association immediately upon becoming the Owner of such Lot a sum equal to one-sixth (1/6th) of the current

Annual Assessment for such Lot (the “Reserve Contribution”), which sum shall be placed in the Capital Reserve Fund. The Board may, from time to time, (with the consent of the Declarant during the Declarant Control Period) thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board by more than twenty percent (20%) during any year without the approval of Members holding more than fifty percent (50%) of the votes in the Association. All Reserve Contributions shall be deposited in the Capital Reserve Fund established pursuant to this Declaration. Reserve Contributions shall be non-refundable and shall not be offset or credited against or considered as an advance payment of the Annual Assessments or any other Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this *Section 8.9* shall not be used in calculating the Maximum Annual Assessment pursuant to *Section 8.5.6* hereof. Reserve Contributions payable pursuant to this *Section* are secured by the Assessment Lien, to the extent permitted by Applicable Law, and are in addition to any other fees provided for in the Community Documents and any other fees to be paid at the close of escrow. The Reserve Contribution shall be used by the Association in compliance with this Declaration and any Applicable Law.

8.9.3 Exemption from Reserve Contribution. No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, a family limited liability company, or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a Person in which the grantor 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 Reserve Contribution, in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, *et seq.*; or (f) to the extent set forth in A.R.S. § 33-442(E), any conveyances between the parties prescribed in A.R.S. § 11-1134(B)(3) or (7).

8.9.4 Annual Audit. The Board shall comply with A.R.S. § 33-1810 and other Applicable Law. As of the date of the Recording of this Declaration, A.R.S. § 33-1810 requires that: (i) the Board provide for an annual financial audit, review or compilation of the Association and (ii) that such audit, review or compilation shall be completed no later than one hundred eighty days after the end of the Association's fiscal year and shall be made available upon request to the Members within thirty days after its completion. The Board may, if it elects, use a certified public accountant to assist in the completion of the foregoing.

8.10 Restriction on Transfer of Debt. For so long as prohibited by A.R.S. § 33-1807(N) or other Applicable Law, the Association may not transfer ownership or control of debt for the Assessment Lien or Member Expenses.

ARTICLE 9

USE OF FUNDS; BORROWING POWER

9.1 Purposes For Which Association's Funds May Be Used. In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all funds and property collected and received by the Association from any source (“Funds”) for the common good and benefit of the Property, the Owners and the Residents. The Funds may be used, among other things, to insure,

acquire, construct, alter, clean, maintain, supervise, provide and operate, in any manner whatsoever, any and all land, properties, Improvements, services, projects, programs, studies and systems within the Property and the Common Areas and other Association Maintained Areas as may be necessary, desirable or beneficial to the general common interests of the Owners and Residents. In connection with the foregoing, the Funds may be used for the administration, office expenses, salaries and other personnel costs of the Association and for the payment of any independent contractors hired by the Association. The Association may also expend its funds for any purposes that any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter, subject to the limitations imposed by *Section 11.6*.

9.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate; provided, however, that no portion of the Common Areas shall be mortgaged or otherwise encumbered except in accordance with *Section 12.4*.

9.3 Surplus Funds; Association's Rights in Spending Funds from Year to Year. The Association shall not be obligated to spend in any year all Funds received by it in such year (whether by way of Assessments, other fees, or otherwise), and may carry forward, as surplus, any Funds remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus of Funds exists from a prior year and the Association may carry forward from year to year such surplus of Funds as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

ARTICLE 10

INSURANCE AND EMINENT DOMAIN

10.1 Association Maintained Insurance Coverage. Commencing no later than the time of the first conveyance of a Lot to a Purchaser, the Association must obtain and maintain at all times, directors' and officers' liability insurance covering all officers and directors of the Association, as well as all regular and alternate members of the Architectural Committee, in amounts and on terms adequate to permit the Association to meet its obligations to indemnify such persons pursuant to the Articles and Bylaws. In addition, and commencing no later than the time of the first conveyance of a Lot to a Purchaser, the Association shall purchase and maintain such property damage and liability insurance upon the Association Maintained Areas, including the Common Areas and such other insurance as the Board, in its absolute discretion, may determine. The premiums payable by the Association for such insurance shall be part of the Common Expenses. The Association shall be the named insured in all policies providing such insurance.

10.2 Payment of Insurance Proceeds. The Association is irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board shall have full and complete power to act for the Association in this regard and may, in 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. With respect to any loss to any Association Maintained Area covered by insurance obtained by the Association, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of this Declaration,

the proceeds shall be disbursed for the repair or restoration of the damage to the Association Maintained Areas. In all other events, all proceeds from insurance acquired by the Association shall be payable to the Association.

10.3 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Association Maintained Areas that is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or unless Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements located on, or other portions of, the Association Maintained Areas. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association in accordance with the Declaration. If all of the Association Maintained Areas are not repaired or replaced, insurance proceeds attributable to the damaged Association Maintained Areas shall be used to restore the damaged area to a condition that is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be retained by the Association and placed in the Capital Reserve Fund.

10.4 Individual Responsibility; Disclaimer of Liability. It shall be the responsibility of each Owner and Resident to provide insurance for himself and his real and personal property interests on or within the Property, including but not limited to, additions and Improvements thereto, furnishings, and personal property thereon, and for his personal liability. No Person shall maintain any insurance that 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 Association Maintained Areas. The Association, the Board, Designated Builders, Landbanker, and the Declarant (including all officers, directors, managers, members, employees, attorneys, and other agents of the foregoing) shall not be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or the amount of such insurance is not adequate.

10.5 Eminent Domain. The term “Taking” as used in this *Section 10.5* shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Area, rights of the Association in Association Maintained Areas, or other property in which the Association has easements or rights, the Owners hereby appoint the Board and such persons as the Board may designate 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 and shall be placed in the Capital Reserve Fund.

ARTICLE 11

DISPUTE RESOLUTION PROVISIONS - MANDATORY BINDING ARBITRATION

11.1 Dispute Resolution.

11.1.1 Consensus for Association Action. Except as provided in this *ARTICLE 11*, the Association may not commence a legal proceeding or an action without the approval or affirmative vote of Owners representing not less than seventy-five percent (75%) of the total authorized votes in the Association, which approval must also contain, at a minimum, (i) the approval of an estimated

budget for the litigation being approved by the Owners and (ii) the approval of a resolution establishing one or more Special Assessments to fund the litigation being approved by the Owners and such litigation specific Special Assessment shall be the only funds of the Association that may be used by the Association to pay litigation fees and costs, and contingent fee agreements shall not be permitted. A Member holding a proxy (if proxies are then allowed by Applicable Law, such as A.R.S. § 33-1812) or otherwise representing Lots owned by Owners other than the voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of seventy-five percent (75%) of the total number of Lots represented by the voting Member. Claims and litigation brought by the Association subject to this *Section 11.1.1* must be disclosed by any Owner selling to a prospective purchaser and must be disclosed by the Association if the prospective purchaser requests any information from the Association. *Section 11.1* shall not apply, however, to (i) actions brought by the Association to enforce the Community Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or (v) any claims, grievances or disputes that do not involve a Bound Party and where the amount in controversy is equal to or less than \$50,000.00. Except for the various matters that are excluded from the scope of “Claims” in *Section 11.1.3* below, in no event shall the cost of any legal proceeding(s) commenced by the Association be funded out of any Assessments other than one or more Special Assessments that are expressly for such legal proceedings, and such legal proceedings shall also not be funded from reserves, loans, or contingent fee agreements.

11.1.2 Alternative Method of Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors, committee members and other Association officials; and all Owners, Residents, and other Persons subject to this Declaration; any Builder, its officers, directors, employees and agents; and any Person not otherwise subject to this Declaration who agrees to submit to this *ARTICLE 11* after request by a Bound Party (each such entity being referred to as a “Bound Party”) agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes related to the Property or this Declaration as more particularly described in *Section 11.1.3* (collectively, “Claims”) to the procedures set forth in this *ARTICLE 11*.

11.1.3 Claims. Unless specifically exempted below, all Claims between any of the Bound Parties relating to the Property regardless of how the same might have arisen or on what it might be based including, but not limited to, Claims: (a) arising out of or relating to the interpretation, application or enforcement of the Community Documents or the rights, obligations and duties of any Bound Party under the Community Documents; (b) relating to the design or construction of Improvements, whether or not such Improvements are Visible From Neighboring Property; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of *Section 11.1.4* and, if applicable, the dispute resolution provisions of the purchase agreement for the purchase of a Dwelling Unit. Notwithstanding the foregoing, in addition to the provisions of *Section 11.1.4*, Claims involving a Defect or Alleged Defect shall first be subject to the provisions of *Section 11.2*, prior to the Bound Parties proceeding to negotiations under *Section 11.1.4(B)(ii)*. To the extent of any conflict between (i) the dispute resolution provisions of this Declaration and (ii) the dispute resolution provisions (or other similar provisions governing the resolution of claims or disputes) of a purchase / sales agreement, the dispute resolution provisions (or such other similar

provision) of the purchase / sales agreement shall control as between the parties to such purchase / sales agreement as to the Lot(s) or other portions of the Property subject to the purchase / sales agreement, but the provisions hereunder shall apply as to the Common Areas, actions brought by or on behalf of the Association, and other Claims not covered by the applicable purchase / sales agreement.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of *Section 11.1.4*.

- A. any suit by the Association against any Bound Party to enforce the provisions of *ARTICLE 8*;
- B. any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association's and/or Declarant's ability to act under the provisions of *ARTICLE 4* (Permitted Uses and Restrictions) or *ARTICLE 5* (Architectural Control);
- C. any suit between or among Owners which does not include Declarant, a Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Community Documents;
- D. any suit in which any indispensable party is not a Bound Party;
- E. any suit as to which any applicable statute of limitations has expired;
- F. any suit or matter between a Person and its Landbanker; and
- G. those matters set forth in the second to last sentence of *Section 11.1.1*.

11.1.4 Mandatory Procedures.

- A. **Notice.** Any Bound Party having a Claim (for purposes of this *Section 11.1.4*, "Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:
 - (i) the nature of the Claim, including the persons involved and Respondent's role in the Claim;
 - (ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises including, as applicable, proof that the Members have approved the course of action in accordance with *Section 11.1.1* above);
 - (iii) the proposed remedy; and

- (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

To the extent applicable, the Association shall promptly provide to any Bound Party all Association documents reasonably requested by such Bound Party to confirm the Owners representing not less than seventy-five percent (75%) of the total authorized votes in the Association have approved the commencement of a legal proceeding or an action, including the filing of a Claim.

B. Negotiation and Mediation.

- (i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (ii) If the Parties do not resolve the Claim within 30 days after the later of (1) the date of the Notice and (2) for Claims involving an Alleged Defect, the Cure Period provided in *Section 11.2*, then the Claimant may submit the Claim to mediation within 30 days thereafter. If Claimant does not submit the Claim to mediation within such 30-day period, or does not appear for the mediation, then the Respondent shall deliver notice to Claimant, in accordance with *Section 11.7*, stating that Respondent is ready to proceed with mediation of the Claim. If Claimant, within 60 days after the receipt of Respondent's notice, does not submit the Claim to mediation or does not appear for the meditation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
- (iii) All mediation proceedings conducted pursuant to this *ARTICLE 11* shall be administered in accordance with the rules of the AAA, applying the AAA rules, procedures, and protocols determined by the mediator to be most applicable to the nature of the Claim, including, where applicable, the AAA Home Construction Arbitration Rules, the AAA Consumer Due Process Protocol, and Supplemental Procedures for Consumer-Related Disputes.
- (iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 90 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with *Section 11.1.4* and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this *ARTICLE 11*. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying, from all such Parties pro rata) all costs incurred in enforcing such agreement including, without limitation, attorneys' fees and court costs.

C. Binding Arbitration.

- (i) Upon Termination of Mediation, Claimant shall be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the rules of the AAA, applying the AAA rules, procedures, and protocols determined by the arbitrator to be most applicable to the nature of the Claim, including, where applicable, the AAA Home Construction Arbitration Rules, the AAA Consumer Due Process Protocol, and Supplemental Procedures for Consumer-Related Disputes or, if such supplementary procedures are not in effect, in accordance with the AAA's Construction Industry Arbitration Rules then in effect; provided, however, that the Federal Arbitration Act (9 U.S.C. Section 1, *et seq.*) shall apply, as necessary, to supplement the applicable AAA rules. Such Claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000.00 the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator, except as provided in the *Section 11.1.4(C)(ii)*. Arbitrators shall have at least five (5) years' experience serving as an arbitrator and shall have technical expertise and knowledge in the area(s) of dispute, which may include legal expertise if legal issues are involved. The arbitrator(s) shall not have any relationship to the parties or interest in the Property.
- (ii) Consolidation of claims is not permitted except where otherwise required by law. In any case involving multiple parties or consolidated claims, any party may require that a panel of three (3) arbitrators decide the case, including all preliminary and procedural issues. The Party making the request for additional arbitrators agrees to pay the entire cost associated with the additional arbitrators.
- (iii) If Claimant does not submit the Claim to arbitration within 90 days after receipt of the Termination of Mediation, or does not appear for the arbitration, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim, provided nothing

herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

- (iv) Except as elsewhere provided herein, each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).
- (v) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.
- (vi) Unless otherwise mutually agreed by the parties to the proceedings, the arbitration proceedings shall be heard in the County where the Property is located.
- (vii) The award of the arbitrator or its decision is final and may be confirmed, entered and enforced as a judgment in a county having jurisdiction, subject to appeal only in the event of the arbitrator's manifest disregard of the law, no evidence to support the award, or such other grounds for appeal of arbitration awards that exist by statute, common law or the applicable rules of the administrative agency.

11.1.5 Jury Waiver. If any claim or other dispute related to this Declaration, the Property, or the Association, or any matter related to any of the foregoing, is determined by a court to be subject to such court's jurisdiction so that such claim, dispute, or matter will be decided by such court rather than through the procedures in this *Section 11.1*, then the claim, dispute or matter shall be decided by a judge and not a jury. All Bound Parties waive the right to trial by jury. In any such court proceeding the parties shall bear their own attorney's fees and costs in all events, except that costs and fees to enforce a judgment may be subject to reimbursement by the non-prevailing party as decided by the court.

11.2 Right to Cure Alleged Defect. If the Association, the Board or any Owner or other Person (for purposes of this *Section 11.2*, "Claimant") claims, contends, or alleges that a Defect (an "Alleged Defect") exists in any Improvements, whether or not such Improvements are Visible From Neighboring Property, within the Property as installed or constructed by or on behalf of Declarant or a Builder, including, but not limited to, the Dwelling Unit constructed on the Lots, the Bound Party alleged to be responsible (for purposes of this *Section 11.2*, the "Respondent") shall have the right to inspect, repair, redesign, and/or replace the Alleged Defect as set forth in this *Section 11.2*.

A. **Defect Defined.** As used in this Declaration, "Defect" shall mean failure to construct or install Improvements, whether or not such Improvements are Visible From Neighboring Property,

in accordance with: approved plans and specifications, applicable governmental requirements, contractual obligations, applicable covenants or aesthetic requirements or standards of good practice in the applicable industry; using acceptable materials or procedures; in breach of applicable governmental, legal or contractual obligations; or otherwise contrary to the expectations of the Claimant.

B. **Notice of Alleged Defect.** As soon as possible after discovery, and in all events within thirty (30) days after discovering any Alleged Defect, a Claimant shall give written notice of the Alleged Defect (“Notice of Alleged Defect”) to the Respondent(s) believed by the Claimant to be responsible for the Alleged Defect. The Notice of Alleged Defect shall include a reasonably detailed description of the Alleged Defect, which shall include, at a minimum, information constituting “reasonable detail” as described in A.R.S. § 12-1363(Q) the information required by *Section 11.1.4(A)*, and may contain any additional information the Claimant believes to be necessary to cure the Alleged Defect.

C. **Right to Enter, Inspect, Repair and/or Replace.** Within ninety (90) days after the receipt of a Notice of Alleged Defect (the “Cure Period”), the Respondent shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter the affected portion of the Property for the purposes of inspecting and/or conducting testing and, if the Respondent(s) so chooses in its sole discretion, repairing and/or replacing the Alleged Defect (or paying the Claimant the reasonable cost of repairing and/or replacing the Alleged Defect) or to otherwise respond to the Claimant in the event that the Respondent(s) determines that no default has occurred and/or no Defect exists. A Claimant shall have no right to bring any action against Respondent(s) until the earlier of: (i) the expiration of the Cure Period (as such Cure Period may be reasonably extended by the Respondent if Respondent is diligently pursuing a cure) or (ii) the Respondent(s)' election to not take any curative action with respect to the Alleged Defect (the “Termination of the Cure Period”). Upon the Termination of the Cure Period, the Claimant may elect to proceed to mediation as provided in *Section 11.1.4(B)(ii)*, and thereafter, the remainder of *Section 11.1.4.* shall govern the resolution of the dispute between Claimant and Respondent. The Cure Period shall be extended by any period of time that Claimant refuses to allow such Respondent(s) to perform inspections and/or perform tests as provided in this *Section 11.2.* Any agreement made in writing for repair, replacement or other curative action shall be enforceable against both parties to the agreement without requiring either party to again go through the notice and other procedures provided for in this *ARTICLE 11.*

D. **No Additional Obligations; Irrevocability and Waiver of Right.** Nothing in *Section 11.2* 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.

E. **No Amendment of Section 11.2.** Without the express prior consent of Declarant, Landbanker and any and all Designated Builders, *Section 11.2* may not be amended for a period of twenty (20) years from the effective date of this Declaration.

11.3 Conflicts. Notwithstanding anything to the contrary in this Declaration, if there is a conflict between the provisions of this *ARTICLE 11* and any other provision of the Community Documents, this *ARTICLE 11* shall control.

11.4 Arizona Statute Compliance. In the event a court of competent jurisdiction invalidates all or part of this *ARTICLE 11* regarding the resolution of Disputes and litigation becomes necessary, Declarant, each Builder, the Association, the Board, and all Owners shall be bound by the applicable Arizona Construction Defect Statute—currently codified at A.R.S. § 33-2001, *et seq.*, and A.R.S. §12-1361, *et seq.*—then in existence.

11.5 Exclusions. Neither Declarant, nor any Builder, as applicable, shall be liable for damages or any Defects caused by:

- A. normal wear and tear;
- B. an Owner's, Member's, Resident's or third party's use of the Property and/or Improvements;
- C. alterations by Owners, other than those performed by Declarant or a Builder; or
- D. reliance by Declarant or any Builder on engineering or other reports.

11.6 Funds of the Association. Notwithstanding any other provision of this *ARTICLE 11* (or of any other ARTICLE of this Declaration), no funds of the Association shall be used or devoted to proceedings with respect to any Defect unless they are raised specifically for such purposes by a Special Assessment imposed in accordance with the requirements of this Declaration following appropriate notice to the Members of the purposes for which such funds are being collected.

11.7 Notices under Article 11. All notices required pursuant to this *ARTICLE 11* to be given to a Person that is an entity shall be deemed sufficient if personally delivered, delivered by commercial messenger service, or mailed by registered or certified mail, postage prepaid, return receipt requested to the address of: (i) the Statutory Agent for a Person (if any) and (ii) the “Domestic Address” as set forth in the records of the Arizona Corporation Commission or other jurisdiction of organization. With respect to notice that is required to be sent to a Person which is not an entity, such notice may be sent to the last known address of such Member, Owner, or Resident as it appears on the records of the Association as of the date of mailing.

11.8 Scope. Declarant or a Builder may, at its sole election, include its contractors, sub-contractors and suppliers, as well as any warranty company and insurer as parties in any mediation or arbitration. The waiver or invalidity of any portion of this *ARTICLE 11* shall not affect the validity or enforceability of the remaining portions of this *ARTICLE 11*. This *ARTICLE 11* does not limit the rights of Declarant or a Builder against their respective contractors, sub-contractors and suppliers whether at contract or at law.

11.9 Prohibited Claims and Actions on Behalf of Others. In no event shall the Association commence a proceeding or pursue any claim on behalf of one or more Members related to Alleged Defects in any Lot or Lots, or improvements thereon owned by one or more Members, but this *Section 11.9* shall not limit the right of the Association to commence proceedings and pursue claims on behalf of the Association with regard to the Association’s interest in property and improvements owned by the Association, subject to the other provisions of this Declaration. In no event shall a Member commence a proceeding or pursue a claim on behalf of the Association, except to the extent permitted by and in accordance with *ARTICLE 13* hereof.

11.10 Limitation of Damages. All bound parties waive the right to seek or receive consequential, special or punitive damages with regard to any claim.

11.11 Declarant Consent for Amendment of Article 11. Without the prior written consent of Declarant this *ARTICLE 11* may not be amended for a period of twenty (20) years from the effective date of this Declaration.

ARTICLE 12 **MAINTENANCE**

12.1 Association Maintained Areas.

12.1.1 The Association shall be responsible for the management and Maintenance of the Association Maintained Areas and all Improvements located thereon or therein (including, without limitation, any Gates within the Common Area), except for (i) any part of the Association Maintained Areas that any governmental entity is maintaining or is obligated to maintain or (ii) any portion of the Property that is required to be maintained by the Owners of a Lot, either through a Subsidiary Association or otherwise. The Association shall use a commercially reasonable standard of care in providing for the management and Maintenance of the Association Maintained Areas. The Board, however, shall be the sole judge as to the appropriate level of Maintenance of all Association Maintained Areas. Any cooperative action necessary or appropriate to the proper Maintenance of the Association Maintained Areas shall be taken by the Board or by its duly delegated representative. Notwithstanding any duty the Association may have to provide Maintenance of the Association Maintained Areas, the Association, the Declarant, Landbanker and any Builder shall not be liable for injury or damage caused by a latent condition or by any Member, Owner, Resident, or other Person. Neither the Association, nor the Declarant, nor Landbanker, nor any Builder shall be liable to any Person for any claim, injury, or damage arising from the use of the Association Maintained Areas, which shall be used at the risk of the user. No Declarant, Landbanker or Builder has the duty or obligation to provide management or Maintenance of the Association Maintained Areas. The foregoing limitations of liability with respect to the Association, the Declarant or a Builder shall not apply to any claim arising from the gross negligence or intentional misconduct of the Association, the Declarant or a Builder, as applicable.

12.1.2 The Declarant will install turf, plants, trees and other landscaping improvements (i) in the front yard of the Alley-Accessed Lots (the “Front Yard Landscaping”) and (ii) in the back yard of the Alley-Accessed Lots (the “Back Yard Alley Landscaping”, and together with the Front Yard Landscaping, the “Lot Landscaping”). The Lot Landscaping on each Alley-Accessed Lot shall be Association Maintained Areas, and the Association shall be responsible for the maintenance, repair and replacement of the Lot Landscaping and the irrigation system installed to water the Lot Landscaping, if any. The front yard of each Alley-Accessed Lot shall generally be the area between the street and the front exterior wall of the Dwelling Unit and the wall separating the side or back yard of the Alley-Accessed Lot from the front yard of the Alley-Accessed Lot and shall include any areas behind any decorator walls. The back yard of each Alley-Accessed Lot shall generally be the area between the alley and the back exterior wall of the Dwelling Unit and the wall separating the side or front yard of the Alley-Accessed Lot from the back yard of the Alley-Accessed Lot and shall include any areas behind any decorator walls. The Board shall have the right to determine the area of each Alley-Accessed Lot which shall be considered the front yard of the Alley-Accessed Lot or the back yard of the Alley-Accessed Lot for purposes of this Section. No Owner or any Owner’s

Residents, agents, licensees, guests, invitees, or family (other than the Association or its contractors) shall add to, remove or alter the Lot Landscaping. The irrigation system for the Lot Landscaping on each Alley-Accessed Lot shall be metered from a different water meter than the water meter for the Dwelling Unit located on the Alley-Accessed Lot. The Association shall be responsible for the water and electricity cost of irrigating the Lot Landscaping. The Association and its agents, employees and contractors shall be responsible for setting the irrigation controller for the Lot Landscaping, and the Owner of the Alley-Accessed Lot and the Owner's Residents, agents, licensees, guests, invitees, or family shall not alter the settings for the irrigation controller for the Lot Landscaping. Neither the water nor the electricity necessary for the operation of the irrigation system shall be turned off, interrupted or disconnected for any period of time by any Owner, or any Owner's Residents, agents, licensees, guests, invitees, family, or any other Person (other than the Association or its contractors). The Association shall not be responsible for any damage to pipes, sidewalks, driveways or other Improvements on a Lot caused by tree roots and branches of the Lot Landscaping. If any Lot Landscaping or any component of the irrigation system for the Lot Landscaping is damaged or destroyed by the Owner of the Alley-Accessed Lot or the Owner's Residents, agents, licensees, guests, invitees, or family, the cost of the repair or replacement of the damaged or destroyed Lot Landscaping or irrigation system shall be paid to the Association by the Owner of the Alley-Accessed Lot. The Association will not be responsible for maintaining any driveways, walkways, or any other hardscape located on an Alley-Accessed Lot.

12.1.3 The Association may, in the discretion of the Board:

- A. Reconstruct, repair, replace, or refinish any Improvement or portion thereof upon Association Maintained Areas;
- B. Remove and/or replace injured and diseased trees and other vegetation in any Association Maintained Areas and plant trees, shrubs, and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- C. Place and maintain upon any Association Maintained Areas such signs as the Board may deem appropriate for the proper identification, use, and regulation thereof; and
- D. Do all such other and further acts that the Board deems necessary to preserve and protect the Association Maintained Areas and the beauty thereof in accordance with the general purposes specified in this Declaration.

12.1.4 No Owner, Resident, or other Person shall construct or install any Improvements on the Association Maintained Areas or alter, modify, or remove any Improvements situated on the Association Maintained Areas without the written approval of the Board. No Owner, Resident, or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Association Maintained Areas and the Improvements located thereon.

12.1.5 In the event any Plat, deed restriction, or this Declaration permits the Board to determine whether Owners of certain Lots will be responsible for Maintenance of certain Association Maintained Areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of the Property for the Association or an individual Owner to be responsible for such Maintenance considering cost, uniformity of appearance, location, and other factors deemed relevant by the Board. The Board may cause the Association to contract

with others for the performance of the Maintenance and other obligations of the Association under this *ARTICLE 12* and in order to promote uniformity and harmony of appearance. The Board may also cause the Association to contract to provide Maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon. Any charges or fees to be paid by the Owner of a Lot in connection with a contract entered into by the Association with an Owner for the performance of an Owner's Maintenance responsibilities shall also be an Assessment and shall be secured by the Assessment Lien to the extent permitted by Applicable Law.

12.2 Assessment of Certain Costs of Maintenance of Association Maintained Areas. In the event that the need for Maintenance of an Association Maintained Area is caused through the act of any Owner or Resident (or their respective family members, guests, or invitees), the cost of such Maintenance shall be due within thirty (30) days of notice, provided that, prior to submitting a bill for such costs, the Board shall cause a notice to be sent to the applicable Owner or Resident specifying the Maintenance and the Owner or Resident shall have the right to object to such Owner's or Resident's responsibility. Following the Board's consideration of such objection, the Board may absolve the Owner and/or Resident or demand that the Owner and/or Resident pay the bill within the thirty (30) day period provided above. The decision of the Board shall be final and binding, subject to the final decision of a court of competent jurisdiction. Subject to Applicable Law, the Board may also impose an administrative fee of ten percent (10%) of the costs incurred by the Association under this *Section 12.2*.

12.3 Improper Maintenance and Use and Common Areas of Lots; Association's Right to Remedy. In the event (i) any portion of any Lot or Common Area is so maintained as to present a public or private nuisance, (ii) any portion of any Lot or Common Area is so maintained as to substantially detract from the appearance or quality of the surrounding Lots, Common Areas, or other areas of the Property, (iii) any portion of a Lot or Common Area is being used in a manner that violates this Declaration or the other Community Documents, or (iv) the Owner of any Lot or Common Area is failing to perform any of its obligations under this Declaration or other Community Documents, the Board may make a finding to such effect specifying the particular condition or conditions that exist and, pursuant thereto, give notice thereof to the offending Owner that unless corrective action is taken within a timeframe determined by the Board (but subject to Applicable Law), the Board may cause such action to be taken at said Owner's cost. If, at the expiration of the timeframe set forth by the Board in the notice to the Owner (but subject to Applicable Law), the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken (either by undertaking such corrective actions or bringing suit or other legal means to compel the offending Owner to undertake such corrective action) and the cost thereof, together with any attorney's fees expended by the Association in connection therewith, shall be due and payable by the offending Owner. Subject to Applicable Law, the Board may also impose an administrative fee of ten percent (10%) of the costs incurred by the Association under this *Section 12.3*.

12.4 Conveyance of Common Areas. The Declarant, Landbanker, and any Designated Builder may convey all or portions of the Common Areas to the Association from time to time and the Association shall reasonably accept such deeds for the Common Areas shown on the Plat or otherwise reasonably determined by the Association to be Common Area. The Association shall be responsible for the ongoing Maintenance, repair, and restoration (in accordance with the Community Documents) of Common Areas and areas designated or intended to become Common Areas, when

the same are (i) conveyed to the Association and (ii) the Common Area Improvements have been substantially completed and accepted for Maintenance by the Association, which acceptance shall not be unreasonably withheld or delayed. After conveyance of any Common Area to the Association, the Association shall not dedicate or otherwise convey title to the Common Areas, or mortgage or otherwise encumber Common Areas unless: (a) during the Declarant Control Period, the Declarant has executed a written instrument authorizing such action or (b) after the termination of the Declarant Control Period: (i) the Board has adopted a resolution stating that the transaction would be in the best interests of the Owners and Residents, and (ii) the Owners of at least sixty-seven percent (67%) of the Lots have approved such resolution. Notwithstanding anything to the contrary herein contained, if ingress or egress to any Lot is through Common Area to be dedicated, conveyed or encumbered, such dedication, conveyance or encumbrance shall be subject to an easement for ingress and egress benefitting such Lot. The consents required by this *Section 12.4* shall not be required in order for the Association, pursuant to resolution of the Board and consent of the Declarant (during the Declarant Control Period) to grant utility, drainage and other appropriate easements over, under, across or through the Common Area. Additional consents may be requested and additional restrictions may apply under Agency rules if an approval by such Agency of this Declaration has been requested and obtained by the Declarant or Association and the Declarant or the Association desires to have such approval remain in place. Notwithstanding anything to the contrary herein, if the Declarant, Landbanker or a Builder still owns one or more Lots after the termination of the Declarant Control Period, then the Association shall provide at least the same level of Maintenance to the Common Areas that the Declarant provided before the termination of the Declarant Control Period and shall not impede the Declarant's, Landbanker's or Designated Builder's ability to develop, construct and sell its Lots, nor impede such Person's use and access to the Common Areas.

12.5 Procedure for Change of Use of Common Areas. The Association shall have the power and right to change the use, size, shape, or location of any Common Area (and in connection therewith to take whatever actions are required to accommodate the new use), provided such new use: (i) also shall be for the common benefit of the Owners and Residents; and (ii) shall be consistent with any Recorded deed and zoning regulations. Notwithstanding the foregoing, the Association shall not change the use, size, shape, or location of any Common Area unless: (a) during the Declarant Control Period, the Declarant has executed a written instrument authorizing such action or (b) after the termination of the Declarant Control Period: (i) the Board has adopted a resolution stating that the transaction would be in the best interests of the Owners and Residents, and (ii) the Owners of at least sixty-seven percent (67%) of the Lots have approved such resolution. The consents required by this *Section 12.5* shall not be required in order for the Association, pursuant to resolution of the Board and consent of the Declarant (during the Declarant Control Period) to grant utility, drainage and other appropriate easements over, under, across or through the Common Area. Additional consents may be requested and additional restrictions may apply under Agency rules if an approval by such Agency of this Declaration has been requested and obtained by the Declarant or Association and the Declarant or the Association desires to have such approval remain in place.

12.6 Walls and Fences Between Lots and Common Areas. If a wall (whether or not a Party Wall) is located on the boundary line between Common Areas and one or more Lots, then the Association shall be responsible for the Maintenance of the surface on the side thereof that faces the Common Areas and the top of such wall, and the Owner or Owners owning the opposite side of the wall shall be responsible for the maintenance, repair, painting and replacement of such opposite side. If there is any wrought-iron or similar view-fencing located on the boundary line between Common Areas and one or more Lots, and the Association determines, in the Association's sole discretion, that

it is in the best interests of the Association to provide Maintenance of both sides of such view-fencing at the same time, then the Association may provide Maintenance of both sides of such view-fencing, and the Owner(s) adjacent to such view-fencing shall be responsible for one-half of the cost thereof. In the case of destruction of both sides of such wall or structural damage, the Owner(s) owning Lots adjacent to the wall shall be responsible for one-half of the cost of replacement or repair of the wall and the Association shall be responsible for the other one-half.

12.7 Mechanic's Liens on Common Area Prohibited. Under no circumstances shall the Association allow any of the Common Areas to become subject to any mechanic's or materialmen's lien and shall, as soon as possible, release or cause to be released such mechanic's or materialmen's lien from the Common Area. If the mechanic's or materialmen's lien was caused as the result of any action or inaction of an Owner, the Association will bill such Owner for the cost incurred by the Association in releasing or causing such mechanic's or materialmen's lien to be released.

12.8 Landscaping Replacement. Landscaping originally planted in the Association Maintained Areas may exceed the landscaping that is ultimately planned for Association Maintained Areas due to overplanting in anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead or damaged landscaping if, in the reasonable discretion of the Board, (a) the remaining landscaping is acceptable to the Board and (b) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with governmental entities in connection with the Property, even if the location or type of specific plants is different than the types or locations shown on such approved landscaping plans. Neither Declarant nor any other installer of landscaping on Association Maintained Areas shall be responsible for replacement of landscaping that dies more than ninety (90) days following installation; the Association shall be solely responsible for such replacement (subject to potential recovery by the Association from any vandal or negligent person).

ARTICLE 13

RIGHTS AND POWERS OF ASSOCIATION; FINES

13.1 Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things that a homeowners' association could do or that now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable, or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association, along with a copy of the other Community Documents, shall be available for inspection at the office of the Association during reasonable business hours.

13.2 Rights of Enforcement of Provisions of This and Other Instruments.

13.2.1 Enforcement. Declarant, during the Declarant Control Period, and the Association, as the agent and representative of the Members, shall each have the right to enforce the provisions of this Declaration and the other Community Documents. Notwithstanding the foregoing, if Association shall fail or refuse to enforce this Declaration or any provision hereof and the other Community Documents for an unreasonable period of time after written request to do so, then any

Member may enforce them on behalf of the Association by bringing an appropriate action whether in law or in equity, but not at the expense of the Association. No Member may bring an action against the Board or Declarant for failure to enforce the Community Documents without joining as claimants at least twenty percent (20%) of the Members, and without complying with the provisions contained in this Declaration and the other Community Documents. None of the provisions of this Declaration shall obligate or be construed to obligate Declarant or Landbanker or their respective agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, any Supplemental Declaration or any provision hereof or thereof, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

13.2.2 Methods of Enforcement. The Declarant, during the Declarant Control Period, and the Association may enforce the provisions of this Declaration and the other Community Documents in compliance with Applicable Law (including, but not limited to A.R.S. §§ 33-1803 and 33-1807) in any manner provided for in this Declaration or the other Community Documents or by Applicable Law, or in equity, including, but not limited to:

A. Imposing reasonable monetary fines and/or penalties for violations of this Declaration and the Community Documents as more fully described in *Section 13.3*.

B. Suspending an Owner's right to vote;

C. Suspending any Person's right to use any recreational facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from an Owner's Lot;

D. Suspending any services provided by the Association to any Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;

E. Exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;

F. Requiring an Owner, at the Owner's expense, to remove any structure or other Improvement on such Owner's Lot in violation of the Community Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

G. Without liability 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 Community Documents from continuing or performing any further activities in the Property;

H. Towing vehicles from Common Areas that are parked in violation of the Community Documents;

I. Filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or monetary damages, or to obtain such other relief as to which the Association may be entitled; and

J. Recording a written notice of violation by any Owner or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: the name of the Owner or Resident violating or responsible for the violation of the Community Documents; the legal description of the Lot against which the notice is being Recorded; a brief description of the nature of the violation; a statement that the notice is being Recorded by the Association pursuant to this Declaration; and a statement of the specific steps that must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent Purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute any evidence that no violation exists with regard to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that, because of the strength of the Owner's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.

13.3 Fines.

13.3.1 Right to Impose Fines. The Association, acting through the Board, shall have the right to impose various fines (i.e., monetary penalties) for, and to adopt a schedule of fines for, the violation of any provision of the Community Documents by any Owner or Resident.

13.3.2 Procedure to Impose Fine. No fine for violation of any provision of the Community Documents shall be imposed without the Association first providing a written warning to the Owner or Resident in question, which shall contain, at a minimum, the following information: (i) a description of the violation and the provision of the Community Documents that has allegedly been violated; (ii) the date of the violation or the date the violation was first observed; (iii) the first and last name of the person or persons who observed the violation; (iv) a warning stating that the failure to stop such violation within no less than fifteen (15) business days (or less in the event of a recurrence of the same violation within three (3) months of the original violation) or other time periods as may be required by Applicable Law, shall result in the Owner or Resident, as applicable, being subject to the imposition of a fine; (v) the amount of such prospective fine and the manner in which the fine shall be enforced; and (vi) a description of the process the Owner or Resident must follow to contest the notice, which process shall be adopted by the Board in accordance with Applicable Law, and if applicable, shall include the following statement (or such other statement as the Board determines is necessary to comply with then Applicable Law): "This letter serves as notice that you have or may have the option to petition the Department of Fire, Building and Life Safety and/or the State Real Estate Department for an administrative hearing concerning the enforcement of alleged violation(s) pursuant to A.R.S. § 32-2199.01" ((i) through (vi) collectively, the "Violation Notice").

13.3.3 Opportunity to Be Heard. In accordance with Applicable Law, all Owners and Residents receiving a Violation Notice shall be given an opportunity to be heard, in the manner described in the Violation Notice, regarding the imposition of a fine prior to the levying of a fine. The opportunity to be heard shall include, among other procedures described in the Violation Notice or required by law, the right of the Owner or Resident receiving a Violation Notice to provide the Association with a written response by sending the response to the Association (at the address

identified in the Violation Notice) by certified mail within the time period required by A.R.S. § 33-1803 or other Applicable Law, which as of the Recording of this Declaration is twenty-one (21) days after the Owner's or Resident's receipt of the Violation Notice.

13.3.4 Late Fees. Each Owner or Resident failing to pay a fine within fifteen (15) days of the date that the fine is due (or such longer time period as the Board may specify from time to time) shall also pay a late charge as set by the Board from time to time. Until changed by the Board, the initial late charge shall be the greater of (i) fifteen dollars (\$15.00) per month or (ii) ten percent (10%) of the unpaid fine. The fifteen-day delinquency period and late charges shall be subject to any limitations imposed by A.R.S. § 33-1803 or other Applicable Law. Each Owner and Resident shall also pay all reasonable collection fees incurred or applied by the Association and reasonable attorney fees and costs incurred by the Association to collect or otherwise with respect to such fines.

13.3.5 Interest. Unless waived by the Board in writing in its sole and absolute discretion, all amounts owed to the Association under this Declaration or the other Community Documents shall, to the extent permitted by Applicable Law, bear interest at a rate of ten percent (10%) per annum, commencing on the date that is fifteen (15) days (or such longer time period as the Board may specify from time to time) after the date such amount was due and continuing until the date such amount is paid in full.

13.3.6 Limitations. Notwithstanding anything to the contrary contained in this Declaration, the levying and collection of all fines or other monetary penalties under this Declaration must comply with Applicable Law, including A.R.S. §§ 33-1803 and 33-1807.

13.4 Contracts

13.4.1 General Rights, Declarant and Declarant Affiliate Agreements. The Association may enter into, amend and terminate contracts or other transactions with any Person, including, but not limited to, Declarant or Affiliates of Declarant, including without limitation entering into cooperative or bulk services agreements and spending funds for facilities, services and activities, which benefit the Property and surrounding community. Such contracts or other transactions shall not be invalidated or in any way affected by the fact that one (1) or more directors or officers of the Association, or members of any committee, is employed by, has a financial interest in, or is otherwise connected with Declarant; provided, however, that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer, or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member that shall authorize any contract or transaction described above or grant or deny any approval sought by Declarant or any competitor thereof and may vote to authorize any such contract, transaction, or approval.

Upon the expiration of the Declarant Control Period, if the Association has the right to terminate contracts or agreements by and between the Association and Declarant or an Affiliate of Declarant without cause, then such shall only occur upon (i) the approval by consent or vote of 51% of the Members of the Association and (ii) thirty (30) days written notice of such termination to the Declarant or Affiliate of Declarant.

13.4.2 Communications Services and Bulk Agreements. The Association has entered into a Communications Services Installation and Service Agreement (the "Services Agreement") with

FisionX, LLC pursuant to which FisionX will provide communications services (the “Services”) to all Lots in the Property, including Internet Services, Video Services and Telephone Services, as such terms are defined and further described in the Services Agreement. Association has granted FisionX an easement that affects the Property that allows FisionX to install, operate and repair equipment (the “Facilities”) required to deliver the Services. An affiliate of Declarant has an interest in FisionX.

FisionX will provide base Internet Services, and if elected by the Association, may provide optional Video Services, on an exclusive bulk basis to all Lots in the Property (the “Bulk Services”) as further described and defined in the Services Agreement. FisionX has a right of first refusal to provide other Services on a bulk basis to the Association (“Additional Bulk Services”) if the Association should elect to obtain Additional Bulk Services.

FisionX will bill the Association for the Bulk Services, and the Association will bill each Member for its share of the cost of Bulk Services as part of the Assessments billed to Members. Member or Resident will be required to agree to FisionX’s subscriber agreement terms and acceptable use policy to receive the Bulk Services from FisionX. Member’s or Resident’s failure to agree to such subscription agreement and acceptable use policy, or Member’s or Resident’s election to not receive Bulk Service or to receive Services from another provider, will not relieve Member from the obligation to pay for Bulk Services through the amount included in Assessments, except to the extent Applicable Law may provide an exemption for certain individuals. Video Bulk Services may be subject to lease of a compatible set top box by Member.

Member or Resident may individually subscribe and pay for additional or other Services desired by Member or Resident and offered by FisionX or another provider.

Association may provide Member’s or Resident’s contact information and basic transaction information to FisionX to better enable the delivery of Services.

Member consents and agrees to the foregoing and agrees to be bound all easements and agreements with FisionX or other provider for the installation of Facilities and provision of Services, (including Bulk Services) along with any amendments, renewals, and replacements thereof.

ARTICLE 14

ANNEXATION AND DEANNEXATION; REPLAT

14.1 Annexation of Annexable Property. The Annexable Property may be annexed to the Property and become subject to this Declaration and to the jurisdiction of the Association without the approval, assent, or vote of the Association or its Members provided that a Declaration of Annexation covering the portion of the Annexable Property sought to be annexed is: (i) executed by Declarant, or its successors and assigns, and by the fee title holders of the portions of the Annexable Property sought to be annexed, in the event Declarant or its successors and assigns does not hold fee title to all of said property and (ii) Recorded. Such execution and Recording of a Declaration of Annexation shall constitute and effectuate the annexation of the portion of the Annexable Property described therein, making said real property subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association, and thereafter, the Annexable Property so annexed shall be part of the Property and all of the Owners of Lots in the Annexable Property so annexed shall automatically be Members of the Association. Although Declarant, its successors, and assigns, shall have the ability to so annex all or any portion of the Annexable Property, neither Declarant nor its

successors and assigns shall be obligated to annex all or any portion of the Annexable Property, and such Annexable Property shall not become subject to this Declaration unless and until a Declaration of Annexation annexing such Annexable Property shall have been so executed and Recorded. The Declaration of Annexation may contain provisions for the establishment of a Subsidiary Association, if approved and acknowledged by the Association or if established by Declarant in the Declaration of Annexation.

14.2 Annexation of Other Real Property. Prior to the termination of the Declarant Control Period, the Declarant may cause real property other than the Annexable Property to be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association; provided, however, that the Declarant must obtain the consent of the owner of such property. Except with respect to the Annexable Property as set forth in *Section 14.1*, after the termination of the Declarant Control Period, real property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association only with the prior written consent of Members holding at least seventy-five percent (75%) of the votes of the Association and the consent of the owner of such property. In the event that any additional real property is annexed to the Property, such annexation shall be effected by the Recordation of a Declaration of Annexation covering the real property sought to be annexed and executed by the Board and by the owner(s) of the real property sought to be annexed.

14.3 De-annexation Without Approval. During the Declarant Control Period, a portion or portions of the Property may be de-annexed from the Property and be withdrawn from this Declaration and the jurisdiction of the Association provided that a Certificate of De-annexation covering the portion of the Property sought to be de-annexed shall be (i) executed by Declarant and by the Owner(s) of all of the real property to be de-annexed and (ii) Recorded.

14.4 Declarations of Annexation and Certificates of De-annexation. The annexations and de-annexations authorized under the foregoing Sections shall be made by Recording a Declaration of Annexation or similar instrument that shall extend the plan of this Declaration to such property or a Certificate of De-annexation that shall remove the portion of the Property covered thereby from the plan of this Declaration. The Declarations of Annexation contemplated above may contain such complementary additions and modifications of the Covenants contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Declaration of Annexation revoke, modify, or add to the Covenants established by this Declaration within the existing Property.

14.5 Reservation of Right to Resubdivide and Replat. Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Owners, to re-subdivide and replat any Common Area, Lot or Lots, or other portion of the Property which the Declarant then owns and has not conveyed or sold.

ARTICLE 15

TERM; AMENDMENTS; TERMINATION

15.1 Term; Method of Termination. This Declaration shall be effective upon the date of its Recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years

each unless there is an affirmative vote to terminate this Declaration by Members holding ninety percent (90%) of the votes eligible to be cast at a meeting held for such purpose within six (6) months prior to the expiration of the effective period hereof, and by Declarant during the Declarant Control Period with the approval of the Declarant's Landbanker so long as such Landbanker owns any Lot. This Declaration may be terminated at any time if one hundred percent (100%) of the votes cast by the Members shall be cast in favor of termination at a meeting held for such purpose and Declarant, to the extent it continues to own a Lot in the Property, have voted in favor of termination. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained within a period beginning six (6) months prior to such vote to six (6) months after such vote from the holders of First Mortgages to which the Assessment Lien is subordinate pursuant to this Declaration, on seventy-five percent (75%) of the Lots upon which there are such First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect and the Association shall be dissolved pursuant to the terms set forth in its Articles.

15.2 Amendments

15.2.1 To the fullest not prohibited by Applicable Law, during the Declarant Control Period, no Members or Owners, other than the Declarant, shall have the right to vote on, propose or approve any amendments to the Declaration. After the Declarant Control Period, this Declaration may be amended only by the affirmative vote or written consent of Members holding at least sixty-seven percent (67%) of the votes of the Association. No amendment to this Declaration shall be effective until such amendment is Recorded and all amendments shall be effective immediately upon Recording unless a delayed effective date is expressly stated in the amendment. In addition, the provisions of this Declaration shall not be amended to the detriment of Declarant without the prior written consent of Declarant even if Declarant no longer owns any portion of the Property or any portion of the Annexable Property at the time the amendment is adopted.

15.2.2 Notwithstanding anything to the contrary contained in this Declaration, the Declarant, during the Declarant Control Period, may unilaterally, without the consent of any other Person (other than the Declarant's Landbanker (acting in its sole discretion) for so long as Declarant's Landbanker continues to own Lots), amend any provision of this Declaration, which amendment, subject to restrictions of Applicable Law, may apply to or impact all or only a portion of the Lots and/or the Property, as the Declarant shall determine in its sole and absolute discretion. All Owners hereby expressly consent to the foregoing provision and acknowledge that any such amendment may impact some portion of the Lots and the Property, but not others or may treat certain portions of the Property differently than other portions. In all events, however, Declarant reserves the right to amend this Declaration, without the consent or vote of any other Person, to: (a) correct minor errors, ambiguities or omissions; or (b) to conform any provision of this Declaration to Applicable Law. After the termination of the Declarant Control Period, the Board reserves the right to amend this Declaration, without the consent or vote of any Person, to: (a) correct minor errors, ambiguities or omissions; or (b) to conform any provision of this Declaration to Applicable Law.

15.2.3 Any amendment approved by the Owners shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the

amendment has been approved as required by this *ARTICLE 15*. Any amendment made by Declarant shall be signed by Declarant and Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

15.2.4 Any challenge to any amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this *Section 15.2* must be made within one (1) year after the Recording of the amendment.

15.2.5 In the event any court of competent jurisdiction determines that Declarant does not have the right to unilaterally amend the Declaration as provided herein, Declarant will be permitted to amend the Declaration with the affirmative vote or written consent of Members holding at least a majority of the votes of the Association; provided, however, that Declarant, each Designated Builder, and each Landbanker will be deemed to have four (4) votes in the Association for each Lot owned by such party, and all other Owners will be deemed to have one (1) vote in the Association for each Lot owned by such Owners.

15.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions.

15.3.1 The Declarant, during the Declarant Control Period, and thereafter the Board, may amend this Declaration or the Plat without obtaining the approval or consent of any other Person in order to conform this Declaration or the Plat to the requirements or guidelines of any Agency, or any other federal, state, or local governmental agency whose approval of the Property, the Plat, or the Community Documents is required by law, by Declarant, or by the Board.

15.3.2 During the Declarant Control Period, and if the Property has been approved by the FHA, the VA, or any other Agency in connection with any loan programs made available by such Agency, any amendment to this Declaration must be approved by the FHA, the VA, and any other Agency that affects any Lot or which Declarant desires remain in effect, as applicable, and only if required by such Agency at the time of the amendment.

ARTICLE 16 **MISCELLANEOUS**

16.1 Interpretation of the Covenants; Conflict.

16.1.1 Except for judicial construction and as hereinafter provided, the Declarant, during the Declarant Control Period, and thereafter, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, the Articles, the Bylaws, and the Association Rules. In the absence of any adjudication to the contrary by a court of competent jurisdiction, such party's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by this Declaration, the Articles, the Bylaws, or the Association Rules.

16.1.2 In the event of any conflict between this Declaration and the Articles, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and either the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

16.2 Compliance with Applicable Law; Severability. It is the intent of the Declarant that this Declaration, and all of the Community Documents, comply with all Applicable Law and to the extent any provision of this Declaration or the Community Documents is in violation of any Applicable Law, the provisions of Applicable Law shall prevail. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

16.3 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.

16.4 Perpetuities and Restraints on Alienation. If any of the options, privileges, Covenants, or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the last living survivor of the living descendants of the President of the United States on the date hereof.

16.5 Laws, Ordinances, and Regulations. The Covenants set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of Declarant, the Board, or the Architectural Committee with respect to a certain action are independent of the obligation of the Owners and other Persons to comply with all Applicable Law. The compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all Applicable Law. Any violation of any Applicable Law pertaining to the ownership, occupation, or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

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

16.7 References to the Covenants in Deeds. Deeds to and instruments affecting any Lot or Common Area or any part of the Property may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee/Owner or other Person claiming through any instrument and such Person's heirs, executors, administrators, successors, and assigns.

16.8 Time is of the Essence. Time is of the essence of this Declaration.

16.9 Governing Law. The provisions of this Declaration shall be governed by and interpreted in accordance with the laws of the State of Arizona.

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

16.11 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit,

modify, or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

16.12 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by Applicable Law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City. This *Section 16.12* 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.

16.13 Waiver. The waiver of or failure to enforce any breach or violation of this Declaration will not be deemed a waiver or abandonment of any provision of the Declaration or a waiver of the right to enforce any subsequent breach or violation of the Declaration. The foregoing shall apply regardless of whether any Person affected by the Declaration (or having the right to enforce the Declaration) has or had knowledge of the breach or violation.

16.14 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Areas or any Funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only to the extent appurtenant thereto).

16.15 FHA/VA.

16.15.1 Notwithstanding any inconsistent or contrary provision in this Declaration, if at any time there is an FHA, VA or USDA insured loan affecting a Lot, and only for so long as any such loan affects the Lot, any restrictions in this Declaration or in the Association Rules on leasing, subleasing, conveyance or reconveyance that violate any FHA, VA or USDA requirements shall not apply to such Lot or its Owner or Residents.

16.16 Gates.

16.16.1 The Declarant or the Association may, but shall not be obligated to, construct gated entrances for motor vehicles or Recreational Vehicles and/or pedestrians (each a "Gate" and collectively, the "Gates") leading into the Property, or portions of the Property, in order to limit access to the Property or such portions and to provide some privacy for some or all of the Owners and Residents. If constructed, the Board may make reasonable rules, which shall be consistent with this Declaration, relating to the right of entry through such Gates of each Gate User (as defined in *Section 16.16.2*). Also, if constructed, the Gates will be considered an Improvement on the Common Areas and shall be maintained by the Association as set forth herein.

16.16.2 Each Owner and Resident, and such Owner's and Resident's family members, agents, guests, invitees, tenants, lessees, or other permittees who uses a Gate (each a "Gate User" and collectively, the "Gate Users") hereby acknowledge, understand, and agree that Declarant may, at its option, keep one or more of the Gates open for extended periods of time during construction and marketing activities at the Property.

16.16.3 Each Gate User hereby acknowledges and agrees as follows: (i) neither the Declarant, nor the Association, nor any Designated Builder make any representations or warranties that any of the Gates will provide security, safety, or privacy to any Gate User; (ii) that each Gate User hereby assumes the risk that any Gate may not provide security, safety, or privacy and may restrict or delay entry into the Property and access to a Dwelling Unit by each Gate User and police, fire department, ambulances, and other emergency vehicles or personnel; (iii) neither the Declarant, nor the Association, nor any Designated Builder shall be considered in any way the guarantor or insurer of security within the Property and no such Person shall be liable or responsible in any way for a failure to provide adequate security or for the ineffectiveness of security, safety, or privacy measures undertaken in good faith; (iv) the Gates, any patrolling of the Property, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security system (a) may be compromised or circumvented, (b) may not prevent loss by burglary, theft, hold-up, or otherwise, and (c) may not in all cases provide the detection or protection for which the system, group, or plan is designed or intended.

16.16.4 The Declarant, the Association, any Designated Builder, any management company retained to manage the Property, and any member, partner, director, officer, agent or employee of any of the foregoing, shall not be liable to any Gate User for any claims or damages resulting, directly or indirectly, from the construction, operation, existence, or maintenance of the Gates and each Gate User hereby releases such Persons from any and all claims, actions, suits, demands, causes of action, losses, damages, or liabilities (including strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from the construction, operation, existence or maintenance of the Gates.

16.17 Additional Disclosures.

16.17.1 The Common Areas may include a community pool and related facilities (the "Pool"). Use of the Pool is subject to, among other things, (i) the Association's right to close the Pool from time to time for maintenance and repairs and (ii) the Association Rules, including, without limitation, a requirement that an Owner or Resident accompany their guests at all times and any rules restricting the hours of use, a minimum age for unaccompanied minors, restrictions on the types and containers for beverages within the pool area, and the number of guests permitted at a time. Each Owner and such Owner's Residents, agents, licensees, guests, invitees, or family must abide by pool safety rules, including the following recommendations by the Arizona Department of Health Services: (1) never leave a child unattended in the pool or pool area; (2) because flotation devices and swimming lessons are not substitutes for supervision, a child should always be watched when in or around the pool area; (3) toys, tricycles or other playthings should not be placed in the pool area; (4) do not be distracted by phone calls, doorbells, or chores while children are in the pool -- full attention should be on the children; (5) do not rely on swimming lessons or "floaties" to protect children; and (6) do not prop gates open. Each Owner and such Owner's Residents, agents, licensees, guests, invitees, or family acknowledges and understands that use of the Pool is at such party's own risk, and, except for a Declarant's, Landbanker's, or the Association's negligence or willful misconduct, agrees to and does hereby indemnify, defend, release and hold harmless each Declarant, Landbanker and the Association from all claims, losses, liabilities, and expenses related to the use of the Pool.

16.17.2 A private sewer lift station and/or force main is/are constructed within Tract T as shown on the Phase 1 Plat serving certain Lots and/or Tracts. Declarant and Landbanker disclose to each Owner and Resident, and each Owner and Resident acknowledges, that the conditions and stipulations for development of the Property imposed by the Governmental Authorities require that the Association operate and maintain the private sewer lift station and/or force main that is/are located within Tract T which services the certain Lots and/or Tracts. Such operation and maintenance are subject to the rules, regulations and other requirements of the Arizona Department of Environmental Quality (ADEQ) which include, without limitation, a requirement that any maintenance be performed by ADEQ-registered consultants and contractors. The private sewer lift station and/or force main is/are Association Maintained Areas, and all costs, expenses and liabilities related thereto shall be Common Expenses. Such lift station and/or force main will be owned, operated and maintained by the Association until such time, if ever, when the corresponding sewer lines are connected to public sanitary sewer systems and such lift station and/or force main are no longer required. The Board in its sole discretion shall determine when and whether the corresponding sewer lines may be connected to public sanitary sewer systems and such lift station and/or force main are no longer required, subject to review and approval by any required Governmental Authority.

16.17.3 Tract ZZZ as shown on the Phase 1 Plat (the “**Billboard Tract**”) is owned by a third party and contains a billboard owned by that third party (the “**Billboard Owner**”). The Billboard Owner shall constitute an Owner for purposes of this Declaration but shall not be a Member in the Association. The Billboard Tract shall not be subject to the imposition of Assessments. The Billboard Owner shall have a right and easement over all private streets within the Property for purposes of ingress and egress to and from the Billboard Tract. The Billboard Owner shall, at its sole cost and expense, maintain the Billboard Tract (including, without limitation, all walls, gates and other improvements thereon) in good condition and repair. Notwithstanding the fact that Tracts KK and V as shown on the Phase 2 Plat are Association Maintained Areas, the Billboard Owner shall be responsible for the cost to repair any damage to Tracts KK and V (including, without limitation, damage to curbs and landscaping) caused by the Billboard Owner, its agents, employees and contractors.

16.17.4 A sound barrier wall is or may be constructed near and along all or part of the shared boundary line between the Property and Arizona Department of Transportation’s Loop 101 right-of-way (the “**Sound Barrier Wall**”), approximately four (4) feet from such shared boundary line. The Sound Barrier Wall will include two (2) service doors to provide access for weed control and repainting. Owners, Residents, and their respective family members, guests, tenants, and invitees shall not access or otherwise use these service doors. Service crews providing maintenance on behalf of the Association may access and use these service doors but will not enter upon the Loop 101 right-of-way.

16.17.5 The Property is subject to, among other things, the various terms and provisions set forth in the Plat, which are incorporated herein by this reference.

16.17.6 Irrigation Water. Water used to irrigate the Common Area landscaping and to fill water features within the Property, may be reclaimed (effluent) or other non-potable water (“**Irrigation Water**”) when available for such purposes. The Irrigation Water is not potable (drinkable) water and consumption of such Irrigation Water by humans or animals may cause severe illness.

16.18 Special Landbanker Provisions.

16.18.1 Conflicts with Section 16.18. The provisions of this *Section 16.18* shall control over any contrary provisions of this Declaration.

16.18.2 Amendment Approval. Any amendment to this Declaration, the Bylaws, the Articles, the Association Rules, the Architectural Committee Rules, or the Maintenance Standards shall require the prior written approval of Landbanker (which may be withheld in Landbanker's absolute discretion), except for any amendment needed to conform the provisions thereof to the requirements or guidelines of any Agency, or any other federal, state, or local governmental agency whose approval is required by law, or desired by Declarant or the Board. Any purported amendment without such approval shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by Landbanker and, with respect to this Declaration, Recorded.

16.18.3 Limitation on Rights as Declarant. As long as Lennar is the Declarant, Lennar shall not, without the prior written consent of Landbanker, have the right to exercise any of the "Declarant" rights under this Declaration in any manner which will have an adverse impact on the Lots or other portion of the Property owned by Landbanker.

16.18.4 Enforcement by Landbanker. Landbanker shall have the right to enforce any of the provisions of this Declaration, the Articles and the Bylaws that are intended to be for the benefit of Landbanker or that affect (or would affect) the Landbanker's Lots.

16.18.5 Assignment of Declarant Rights. Any assignment of the Declarant's rights, powers, authority and obligations under this Declaration shall require the prior written consent of Landbanker and any purported assignment without such consent shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by Landbanker and Recorded.

16.18.6 Termination of Declarant Control Period. Any document or instrument executed by Declarant electing to terminate the Declarant Control Period shall also require the prior written consent of Landbanker and any such document or instrument without such consent shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by Landbanker and Recorded.

16.18.7 Additional Recorded Documents. Any provision of this Declaration requiring the Declarant to consent to a Recorded document or instrument that would affect the Property owned by Landbanker in any manner shall, in order to be valid, also require the prior written consent of Landbanker (acting in its sole discretion), and any such document or instrument without such consent shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by Landbanker and Recorded. Notwithstanding the foregoing, nothing herein shall require the Landbanker consent to any Declaration of Annexation annexing into this Declaration any Property covered by the Option Agreement and no longer owned by Landbanker.

16.18.8 Landbanker Becoming Declarant. If the Option Agreement is terminated prior to the purchase by Lennar from Landbanker of all of the Property, such termination being evidenced by the recording of a Notice of Termination of Option by Landbanker, Landbanker shall, upon recordation of a Notice of Acquisition of Declarant Rights, automatically become the Declarant under this Declaration with respect to all Property then owned by Landbanker and Lennar shall also

remain a Declarant under this Declaration with respect to all Property then owned by Lennar or previously sold by Lennar to another Person. Landbanker shall not be liable to any Member or any other Person for any act or omission of Declarant including, without limitation, Declarant's failure to pay any amounts owing or to be paid or reserved for hereunder or as may otherwise be required by statute or at law or to perform any act or obligation required to be performed by Declarant hereunder or as may otherwise be required by statute or at law, arising prior to the date Landbanker becomes a Declarant hereunder, and Landbanker shall assume the obligations of the Declarant under this Declaration only for matters and obligations arising or to be performed from and after the date Landbanker becomes a Declarant hereunder and then only with respect to the Property owned by Landbanker. Landbanker is hereby released and discharged from any and all obligations of the Declarant under this Declaration accruing prior to the date Landbanker becomes a Declarant hereunder. The Declarant or Builder on behalf of which a Landbanker is "landbanking" Property, agrees to and does hereby indemnify, defend, release and hold harmless its respective Landbanker from all obligations of the Declarant under this Declaration accruing prior to the date such Landbanker becomes a Declarant hereunder.

16.18.9 Expiration of Special Landbanker Provisions. Upon the earlier to occur of (1) the time that Landbanker no longer owns any Lot or any other portion of the Property or (2) the date the Option Agreement is terminated prior to the purchase by Lennar from Landbanker of all of the Property (such termination being evidenced by the recording of a Notice of Termination of Option), *Sections 16.18.1 through 16.18.7* shall be null and void and of no further force or effect (except that if clause (1) shall apply then *Section 16.18.8* shall also be null and void and of no further force or effect), and upon request, Landbanker shall execute a statement in recordable form confirming the same.

[Signature page follows]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

LENNAR ARIZONA, LLC,
an Arizona limited liability company

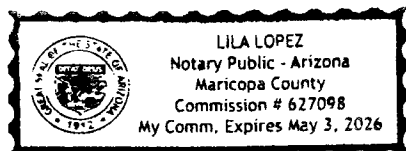
By: *[Signature]*
Name: Shernie Eckert
Title: President

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

This instrument was acknowledged before me this 29th day of January, 2025, by Michael Lanata, Vice President of **LENNAR ARIZONA, LLC**, an Arizona limited liability company, on behalf of the company.

NOTARY SEAL:

[Signature]
Notary Public



IN WITNESS WHEREOF, Landbanker has executed this Declaration as of the day and year first above written.

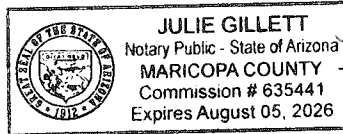
KLLB AIV LLC,
a Delaware limited liability company

By: *Nathan Holt*
Name: Nathan Holt
Title: Authorized Signatory

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this 29th day of January, 2025, by Nathan Holt, the Authorized Signatory of **KLLB AIV LLC**, a Delaware limited liability company, on behalf of the company.

NOTARY SEAL:



Julie Gillett
Notary Public

ACCEPTANCE BY ASSOCIATION

WESTERN GARDEN COMMUNITY ASSOCIATION, an Arizona nonprofit corporation, hereby agrees to, ratifies, consents, accepts and adopts the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Western Garden (the "Declaration") and hereby subjects to the terms and conditions of the Declaration any and all portions of the Initial Property now owned by the Association.

DATED this 29th day of January, 2025.

WESTERN GARDEN COMMUNITY ASSOCIATION, an Arizona nonprofit corporation

By Katie Voigt
 Name Katie Voigt
 Title President

STATE OF Arizona)
) ss.
 COUNTY OF Maricopa)

This instrument was acknowledged before me this 29th day of January, 2025 by Katie Voigt, the President of Western Garden Community Association, an Arizona nonprofit corporation, on behalf of the corporation.

NOTARY SEAL:

Lila Lopez
 Notary Public

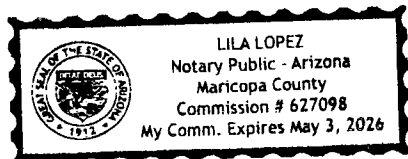


EXHIBIT “A”**Legal Description of Initial Property**

All Lots and Tracts (excluding Parcels C, D and E) shown on that certain Final Plat for Western Garden Phase 1 recorded September 15, 2023, in Book 1757 of Maps, Page 47 in the office of the Maricopa County Recorder; and that certain Final Plat for Western Garden Phase 2 recorded July 31, 2024, in Book 1814 of Maps, Page 23 in the office of the Maricopa County Recorder.

Note: The Billboard Tract is owned by the Billboard Owner, not the Landbanker.