

DECLARATION OF CONDOMINIUM AND
COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

~~SWEETWATER TRAILS~~ → "Buffalo Ranch" application
name will be changed.

This Declaration of Condominium and Covenants, Conditions, and Restrictions for Sweetwater Trails is made as of the date set forth at the end of this Declaration by Sydney Sweetwater, L.L.C., an Arizona limited liability company.

BACKGROUND

A. Declarant is the owner of certain real property (the "Property") that is depicted on the Plat and that is additionally described as follows:

See Exhibit "A" attached to and incorporated in this Declaration by this reference.

The real property is located in the City of Scottsdale, County of Maricopa, State of Arizona.

B. Declarant desires to provide for the construction of a residential project consisting of twenty three (23) individual lots ("Lots") with common elements and other facilities.

C. Declarant intends that this Declaration and the other associated documents will facilitate a general plan for development for the Lots.

DECLARATION AND GRANT

Accordingly, Declarant declares that the Lots and Common Elements described in this Declaration shall be held, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, and conveyed subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges, and liens (collectively referred to as "covenants and restrictions"). The covenants and restrictions are for the purpose of protecting the value, attractiveness, and desirability of the Lots, and the covenants and restrictions shall benefit, burden, and run with the title to each Lot and shall be binding upon all parties having any right, title, or interest in or to any Lot and their heirs, successors, and assigns. The covenants and restrictions shall inure to the benefit of each Owner. The Declarant further declares as follows:

ARTICLE 1

DEFINITIONS

1.1 "Alleged Defect" means as provided in Article XII.

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

1.3 "Assessment," "assessment," "annual assessment," and "special assessment" (and the plural of each) means the assessments authorized in this Declaration, including those authorized in Article 6.

1.4 "Association" means Sweetwater Trails Homeowners Association, Inc., that has been or will be incorporated by Declarant as a non-profit Arizona corporation, and shall mean additionally the Association's successors and assigns.

1 5 “Association Rules” means any rules and regulations or architectural guidelines that may be adopted or amended by the Association

1 6 “Board” and “Board of Directors” means the Board of Directors of the Association

1 7 “Building” each of the buildings actually constructed from time to time on a Lot

1 8 “Bylaws” means the bylaws of the Association, as may be amended from time to time in the manner set forth in the Bylaws

1 9 “City” means the City of Scottsdale, Arizona

1 10 “Claimant” means the Association, the Board, or any Owner

1 11 “Common Elements” means all those areas shown on the Plat that are not included within the description of the Lots, or any of them

1 12 “Declarant” means Sydney Sweetwater, L L C , an Arizona limited liability company The term “Declarant” will include all successors and assigns of Sydney Sweetwater, L L C , an Arizona limited liability company, if the successors or assigns (i) acquire more than one (1) Lot from the Declarant for the purpose of resale or development, and (ii) record a supplemental declaration executed by the then-Declarant declaring the successor or assignee as a succeeding Declarant under this Declaration “Declarant” does not include any Mortgagee

1 13 “Declaration” means this Declaration of Covenants, Conditions, and Restrictions and the covenants and restrictions set forth in this entire document (in entirety or by reference), as may be amended from time to time in the manner set forth below

1 14 “Development Rights” means any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following

(a) Create easements, Buildings, or Common Elements within the Project,

(b) Subdivide Lots, convert Lots into Common Elements or convert Common Elements into Lots, or

(c) Amend the Association Documents during the period of Declarant Control as provided in Section 11 5(d) or amend the Plat pursuant to the provisions of Section 11 6 hereof

1 15 “Documents” means the Declaration, the Association Rules, the Landscape Guidelines, and the Bylaws as in effect from time to time,

1 16 “Easement Rights” means the beneficial right of the Owners of the Lots to use and enjoy the applicable easements created and reserved in this Declaration or the Plat over the Common Elements, whether created or reserved solely for the use and benefit of one (1) Owner or multiple Owners

1 17 “Fractional Interest” means the appurtenant and undivided percentage interest in the Common Elements allocated to each Lot, as determined pursuant to Section 2 3

1 18 “Inventory Lot” means a Lot in any stage of Building construction owned by the Declarant

1 19 “Landscape Guidelines” means those landscape guidelines adopted by the Board which shall govern the extent, nature and timing for the installation of landscape, pool, spa, yard lighting, and associated hardscape surfaces on the Lots

1 20 "Lot" means a portion of the Property designated on the Plat for separate ownership and occupancy by a Single Family. Each Lot shall consist of the parcel of land within the vertical boundaries of the Lot as shown on the Plat, together with the Building and all other Improvements situated thereon. The boundaries of each Lot are shown on the Plat and described in Section 2.2 hereof.

1 21 "Member" shall mean each Owner of a Lot that is located within the Project.

1 22 "Mortgage" (whether capitalized or not) shall mean the conveyance or assignment of any Lot, or the creation of a lien on any Lot, to secure the performance of an obligation, and shall include the instrument evidencing the obligation, and may include a deed of trust, mortgage, assignment, or any other agreement for the purpose of creating a lien to secure an obligation or duty. "First Mortgage" shall mean a Mortgage that is the first and most senior of all Mortgages on the applicable Lot.

1 23 "Mortgagee" (whether capitalized or not) shall mean a person or entity to whom a Mortgage is made and shall include a holder of a promissory note, a beneficiary under a deed of trust, or a seller under an agreement for sale. "First Mortgagee" shall mean a Mortgagee that is the first and most senior of all Mortgagees upon the applicable Lot. "Eligible Mortgage Holder" shall mean a First Mortgagee that has informed the Association, by separate written notice, of the First Mortgagee's address and that has requested notification from the Association on any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

1 24 "Mortgagor" shall mean a person or entity who is a maker under a promissory note, a mortgagor under a mortgage, a trustor under a deed of trust, or a buyer under an agreement for sale, as applicable.

1 25 "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple legal title to any Lot. An "Owner" shall not include those persons having an interest in a Lot merely as security for the performance of an obligation or duty (i.e., a mortgagee). In the case of Lots in which the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, §§ 33-801, *et seq.*, the "Owner" of the Lot shall be deemed to be the trustor. In the case of a Lot covered by an Agreement for Sale of Real Property as described in A.R.S., §§ 33-741, *et seq.*, the buyer of the Lot shall be deemed to be the "Owner." An "Owner's Permittees" shall mean all family members, guests, tenants, licensees, invitees, and agents that use or occupy the Owner's Lot or the Common Area with the implied or express consent of an Owner.

1 26 "Person" (whether capitalized or not) shall mean a natural person, a corporation, a partnership, a trust, or other legal entity.

1 27 "Plat" will refer to the Plat for Sweetwater Trails recorded in Book _____ of Maps, Page _____, Official Records of Maricopa County, Arizona, as it may be amended from time to time pursuant to this Declaration, including but not limited to the amendment of the Plat pursuant to the provisions of Section 11.6 hereof.

1 28 "Project" means the Sweetwater Trails development undertaken by the Declarant and shall include the Buildings and the Common Elements.

1 29 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) adult persons not all so related who maintain a common household in a Lot.

1 30 "Single Family Residential Use" shall mean the occupancy or use of the Building constructed on a Lot by a Single Family in conformity with the requirements imposed by applicable zoning laws or other federal, state, county, or municipal rules, ordinances, codes, and regulations.

1 31 "Special Declarant Rights" means any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following:

- (a) Construct improvements provided for in this Declaration or shown on the Plat,

- (b) Exercise any Development Right,
- (c) Maintain sales offices, management offices, models and signs advertising the Project,
- (d) Use easements through the Common Elements for the purpose of making improvements within the Project,
- (e) Appoint or remove any officer of the Association or any member of the Board of Directors during the period of Declarant Control,
- (f) Exercise the rights described in Section 3 7, and
- (g) Exercise the right of unfettered vehicle and pedestrian access to the Lots owned or used by the Declarant for the purpose of marketing Lots to potential buyers prior to the closing of sales of Lots in the Project

ARTICLE 2
LOT BOUNDARIES, PROPERTY RIGHTS IN COMMON ELEMENTS

2 1 Project Description The Project will consist of twenty-three (23) Lots The identifying numbers of the Lots are those Lots numbered 1 through 23, inclusive, as shown on the Plat

2 2 Lot Boundaries

(i) The Boundaries of each Lot are the vertical planes extending upward and downwards from the boundary lines of the Lot as shown on the Plat

(ii) All utility lines, conduits and gas, cable television, water and electric pipes, lines or meters within the boundaries of a Lot and which serve only the Lot are part of the Lot, and any such utility lines, conduits and gas, cable television, water and electric pipes, lines or meters located outside the boundaries of a Lot which serve more than one Lot are part of the Common Elements In the event of any inconsistency or conflict between the provisions of this Section and the Plat in regard to the description of the boundaries of the Lots, this Section shall control

(b) Notwithstanding anything contained herein to the contrary, Declarant reserves the right to relocate boundaries of Lots by amending the Plat pursuant to the provisions of Section 11 6

2 3 Allocation of Fractional Interest in Common Elements An appurtenant and undivided percentage interest in the Common Elements shall be allocated to each Lot as determined by dividing the numerator of one (1) by the denominator equaling the total number of Lots The Fractional Interest allocated to each Lot shall be One-Twenty-Third (1/23rd) of a whole

2 4 Exclusive Use Subject to the terms of the Documents, each Owner of a Lot shall have the exclusive right to the use of (i) the Lot, and (ii) the Common Elements The exclusive right to the use and possession of the foregoing shall be appurtenant to and inseparable from the ownership of the Lot

2 5 Reallocation or Revision of Boundaries Between Adjoining Lots The boundaries between or among Lots may be reallocated or revised by an amendment to this Declaration and the Plat Any such reallocation of boundaries may be made by the Declarant by an amendment to this Declaration and an amendment to the Plat executed by the Declarant so long as the Declarant owns the Lots whose boundaries are to be reallocated or revised

ARTICLE 3
EASEMENTS AND DEVELOPMENT RIGHTS

3 1 Owners' Easements of Enjoyment Except as provided in this Declaration, every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Elements, in common with all other persons entitled to use the Common Elements. An Owner's right and easement to use and enjoy the Common Elements shall be appurtenant to and pass with the title to every Lot and shall be subject to the following

(a) The right of the Association to regulate the use of the Common Elements, the right of the Association to limit the number of the Owner's Permittees who use the Common Elements, the right of the Association to limit the number and type of pets that use the Common Elements, the right of the Association to hold the Owners accountable for the conduct of the Owner's Permittees and pets,

(b) The right of the Association to suspend the voting rights of any Owner for any period during which any assessment against that Owner or Owner's Lot remains unpaid, or, in the case of any non-monetary infraction of the Documents, for any period during which the infraction remains uncured,

(c) The right of the Association to dedicate or grant an easement covering all or any part of the Common Elements to any provider utility company or municipality for the purposes, and subject to the conditions, that may be established by the Declarant during the period of Declarant Control (as defined in Section 5 2) and, after the period of Declarant Control, by the Board. Except for those easements reserved or created in this Declaration or by the Plat or by any separately recorded easement or map of dedication affecting all or part of the Project, no dedication or grant of easement over all or any part of the Common Elements to any municipality or provider utility company shall be effective unless the dedication or grant is approved at a duly called regular or special meeting by an affirmative vote in person or by proxy of seventy percent (70%) or more of the total number of eligible votes and unless the instrument evidencing the dedication or grant is executed by an authorized officer of the Association and recorded in the proper records in Maricopa County,

(d) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, if such action is approved by Owners entitled to cast at least seventy-five percent (75%) of the votes entitled to be cast, any such action by the Association shall be done in the manner contemplated and subject to the limitations set forth in the Act, and

(e) All rights and easements set forth in this Declaration, including, but not limited to, the rights and easements granted to the Declarant by Section 3 7

3 2 Delegation of Use Subject to and in accordance with the Documents, any Owner may delegate its right of enjoyment to the Common Elements to the Owner's Permittees

3 3 Public Utility Easements Declarant grants and creates a permanent and non-exclusive easement upon, across, over, and under those portions of the Common Elements depicted and described on the Plat as a public utility easement or PUE for the installation and maintenance of utilities servicing the Project, including electricity, telephone, water, gas, cable or satellite television, drainage facilities, sanitary sewer, or other utility lines. All public utility easements depicted and described on the Plat may be used by the provider utility company and municipality without the necessity of any additional recorded easement instrument. The public utility easement described in this Section 3 3 shall not affect the validity of any other recorded easements affecting the Project or the Plat, and the term of this public utility easement shall be perpetual. All utilities and utility lines shall be placed underground, but no provision of this Declaration shall be deemed to forbid the use of temporary power or telephone structures incident to the construction of buildings or structures as needed by the Declarant. Public or private sidewalks may be located in the public utility easements

3 4 Easement for Encroachments Each Lot and the Common Elements are subject to a reciprocal and appurtenant easement benefiting and burdening, respectively, the Lot or the Common Elements for minor encroachments created by construction, settling, and overhangs as originally designed or constructed by Declarant

This easement will remain in existence for so long as any encroachment of the type described in the preceding sentence exists and will survive the termination of the Declaration or other Documents. This easement is non-exclusive of other validly created easements. This easement for encroachments and maintenance is reserved by Declarant by virtue of the recordation of this Declaration for the benefit of the encroaching Lot and its Owner or the Association, as applicable.

3.5 Easements for Support There is hereby granted and reserved to each Lot a nonexclusive easement for structural support over the Common Elements, and each Lot and the Common Elements shall be subject to a non-exclusive easement for structural support in favor of the Common Elements.

3.6 Easements for Ingress and Egress A perpetual and non-exclusive easement for vehicular and pedestrian ingress and egress is created and reserved by Declarant for the benefit of the Declarant and all Owners over, through, and across sidewalks, paths, driveways, roadways, walks, and lanes that from time to time may be constructed within the Project. The right of access described in this Section 3.6 is and will remain at all times an unrestricted right of ingress and egress.

3.7 Declarant's Rights and Easements

(a) Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, storage areas, models and related facilities throughout the Project and to maintain one or more marketing, directional or advertising signs in the Common Elements so long as the Declarant is marketing Lots in the Project. Declarant reserves the right to maintain models, management offices, storage areas and sales and leasing offices on any Lots owned or leased by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate. Declarant may from time to time relocate models, storage areas, management offices and sales and leasing offices to different locations within the Project. Declarant shall have the right and an easement to post signs, flags and banners in the Common Elements in connection with its marketing of Lots.

(b) So long as Declarant is marketing Lots, Declarant shall have the right to restrict the use of the parking spaces located adjacent or nearby to the models, management offices, storage areas and sales and leasing offices then being used by Declarant. Such right shall include reserving such parking spaces for use by prospective Lot purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(c) The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Project that has not been represented in writing to the Association as being property of the Association. The Declarant reserves the right to remove from the Project any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

(d) Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over and across the Common Elements and the Lots to erect and construct the Common Elements, Buildings, and the Lots shown on the Plat and all other improvements the Declarant may deem appropriate and to use the Common Elements and any Lots owned by Declarant for construction of the buildings or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Project.

(e) The Declarant and its employees, agents, contractors and subcontractors shall have an easement over the Lots for the purpose of completing any renovations, warranty work or modifications to be performed by Declarant.

(f) The Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Documents and for the purpose of exercising Special Declarant Rights reserved in this Declaration.

(g) To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant reserves all Development Rights and Special Declarant Rights

(h) The Declarant and its employees, agents and contractors shall have a right and easement on, over and through the Project as may be reasonably necessary for the purpose of inspecting or performing maintenance, repair or the other Declarant obligations set forth under Section 12 7

(i) So long as Declarant is marketing or selling Lots in the Project, Declarant shall have the absolute and unfettered right to keep the entry gates open during those hours the sales office is open in order to allow public access to the model Lots and the sales office for prospective buyers of the Lots, or to enable the Declarant to allow access to the Buildings to prospective buyers or others

(j) So long as Declarant is constructing, developing, or building Buildings in the Project, Declarant shall have the absolute and unfettered right to keep the entry gates open during those hours construction activities are taking place in order to allow access to the Lots to construction workers, tradesman, material men, and others involved in the construction or finishing of the Lots or Buildings

(k) Declarant shall have the right to amend the Plat pursuant to the provision of Section 11 6 hereof

In the event of any conflict or inconsistency between this Section 3 7 and any other provision of the Documents, this Section 3 7 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3 7 shall be enforceable by injunction, or by any other remedy available at law or in equity and/or by any means provided in this Declaration

3 8 Common Elements Easement in Favor of Lot Owners The Common Elements shall be subject to the following easement in favor of the Lots benefited

(a) For the installation, repair, maintenance, use, removal or replacement of pipes, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Lot and which pass across or through a portion of the Common Elements

3 9 Common Elements Easement in Favor of the Association The Common Elements shall be subject to an easement in favor of the Association, its' Board and the agents, employees and independent contractors of the Association, for the purpose of the inspection, upkeep, maintenance, repair, and replacement of the Common Elements

ARTICLE 4 **USE RESTRICTIONS**

In addition to all other covenants and restrictions contained in this Declaration and the other Documents, the use of the Common Elements and the Lots is subject to the following

4 1 Restricted Use

(a) All Lots and Buildings thereon shall be used, improved and devoted exclusively to residential use by a Single Family. No gainful occupation, profession, trade or other nonresidential use shall be conducted on or in any Lot or Building, but an Owner or Owner's Permittees of a Lot may conduct a business activity within a Lot so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the City, (iii) the business activity does not involve retail sales, business meetings, appointments, gatherings, or day care, (iv) the business activity does not result in shipping or receiving from or to the Lot, (v) the business activity does not involve persons coming to the Lot or the door-to-door solicitation of Owners or Owner's Permittees in the Project, (vi) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential

use, (vii) the business activity is consistent with the overall residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of the other Owners, as may be determined from time to time in the sole discretion of the Board of Directors, and (viii) the business activity does not entail employees, clients or customers coming on to the Project, or persons entering into a Lot for the purpose of receiving or delivering products or services arising out of such usage, except as may be approved from time to time in the sole discretion of the Board of Directors. Notwithstanding the foregoing provisions of this Section 4 1(a), to the extent the Board of Directors approves of a use under this Section 4 1(a), the Board of Directors may place such conditions upon the use as the Board of Directors determines to be reasonable

(b) The terms “business” and “trade” as used in this Section 4 1 shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended or does generate a profit, or (iii) a license is required for such activity. The mere leasing of a Lot by the Owner thereof in accordance with the provisions of Section 4 10 below shall not be considered a trade or business within the meaning of this section

(c) Notwithstanding the foregoing, Declarant and its agents, successors, or assigns may use the Lot or any Building for any of the uses as may be required, convenient, or incidental to the construction and sale of Lots, including, without limitation, a business office, management office, storage area, construction yard, signage, model sites, and a display and sales office during the construction and sales period

4 2 Signs

(a) No emblem, logo, sign, or billboard of any kind shall be displayed on any of the Lots, Buildings, or the Common Elements so as to be visible from neighboring property, except for (i) signs used by Declarant to advertise the Lots for sale or lease, (ii) signs on the Common Elements as may be placed and approved by the Declarant, during the period of Declarant Control, or by the Board, after the period of Declarant Control and (iii) any signs as may be required by legal proceedings. The foregoing will not be deemed to prevent the right of an Owner to display religious and holiday signs, symbols, and decorations of the type customarily and typically displayed inside or outside Buildings, subject to the authority of the Board to adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners (including disturbance from pedestrian and vehicle traffic coming on the Project to view the signs, symbols, and decorations)

(b) Subject to the rights of Declarant under Section 4 2(a) hereof, no sign of any kind or nature advertising a Lot or Building for sale shall be displayed on any of the Lots, Buildings, or the Common Elements

4 3 Improvements & Alterations

(a) No Person shall make any structural or non-structural additions, alterations or improvements of any type or nature (including, but not limited to, the change or alteration of any exterior color, architectural elements, style, or condition) (collectively, “Modifications”) to the exterior or exterior appearance of any Building located on a Lot unless prior to the commencement of each Modification, (i) the Owner retains an architect or engineer licensed in Arizona who certifies to the Board that such Modification will not impair the structural integrity of the Building, (ii) the Owner provides the Association with a written indemnity against liability in accordance with Article 8 below in form provided by the Board, (iii) the Owner executes a written acknowledgment that any such Modification may negate or amend any contractual, statutory or common law warranty expressly or implicitly provided by Declarant, and (iv) the Owner receives a formal written approval of the Modification from the Board. The Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Lots, Buildings, and

to the Common Elements that results from any such Modifications. The term "Modifications" shall not include any structural additions, alterations or improvements made by the Declarant, its agents, employees or contractors, during the initial construction of the Lot or any Building.

(b) Any Owner may make nonstructural Modifications within his Lot that do not affect the exterior or exterior appearance of the Building without the prior written approval of the Board, but such Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Lots, Buildings, and to the Common Elements which results from any such Modifications.

(c) Notwithstanding the foregoing, no Modifications within a Lot, which would be visible from the exterior of the Lot or from the Common Elements shall be made without the prior written consent of the Board, which approval shall only be granted if the Board affirmatively finds that the proposed Modification is aesthetically pleasing and in harmony with the surrounding improvements. Further, in the event any Owner petitions to install awnings outside of any exterior windows or patio doors, whether temporary or permanent and whether manually or electronically controlled, such petition for approval shall also require the consent of the Declarant, while Declarant owns any Lots.

(d) The approvals required of the Board and/or Declarant pursuant to this Section 4.3 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, including those of the City.

(e) The Board shall have the right to charge a reasonable fee for reviewing requests for approval of any Modification, which fee shall be payable at the time the application for approval is submitted to the Board. The Board may establish a schedule of architectural review fees as part of any Rules as may be adopted by the Association.

(f) No Owner shall alter, modify, enter, landscape, or in any way degrade the areas delineated as Common Elements on the Plat. Each Owner acknowledges that the Association is solely responsible for the maintenance and operation of the Common Elements.

4.4 Noxious or Offensive Activities No noxious or offensive activity shall be engaged in (or permitted to be engaged in) any Lot. No act or use may be performed on any Lot that is or may become an annoyance or nuisance to the neighborhood generally or other Owners specifically, or that interferes with the use and quiet enjoyment of any of the Owners and of the Owner's Lot. No Owner shall permit any thing or condition to exist upon any Lot that induces, breeds, or harbors infectious plant diseases or infectious or noxious insects.

4.5 Animals No animals, livestock, horses, birds, or poultry of any kind shall be raised, bred, or kept on or within any Lot or Building on a Lot, however, an Owner may keep up to two (2) dogs or two (2) cats or two (2) other common household pets or two (2) of any combination of dogs, cats, or other common household pets in the Lot if permitted under local zoning ordinances. Additional pets are prohibited unless approved in writing in advance by the Board. The foregoing restriction will not apply to fish contained in indoor aquariums. These permitted types and numbers of pets shall be permitted for only so long as they are not kept, bred, or maintained for any commercial purpose and for only so long as they do not result in an annoyance or nuisance (by way of example, and not limitation, barking or vicious dogs) to other Owners. No permitted pets shall be permitted to move about unrestrained in the Project, Common Elements, or any public or private street within the Project. Each Owner shall be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the Project, including all public or private streets. Owners shall be liable for all damage caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing, and the Board will be the sole judge for determining whether a pet is a common household pet or whether any pet is an annoyance, vicious, or a nuisance.

4.6 Trash All rubbish, trash, and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate on any Lot. In the case of an Owner who allows trash to accumulate on the Owner's Lot, the Board, on behalf of the Association, may arrange and contract for the removal and cleanup of the trash, and the costs

shall become a special assessment to that Owner. No incinerators shall be kept or maintained on any Lot. Trash containers shall be screened from view and replaced behind the screening as practical following pick-up.

4.7 Woodpiles and Storage Areas Woodpiles and open storage areas may not be maintained upon any Lot. At no time shall an Owner maintain any storage on the Lot of Commercial or Recreational Vehicles or Family Vehicles (as described in Sections 4.15 and 4.16) of the type described in this Declaration in any stage of construction, reconstruction, modification, or rebuilding. No vehicle frames, bodies, engines, or other parts or accessories shall be stored on the Condominium.

4.8 Antennas Except as originally installed by the Declarant, no external radio, direct television, television antenna, or satellite dish shall be installed or constructed on any Lot, or roof of any Lot, except as permitted in writing by the Association. Any such device shall be sited so as to not be visible from public right of ways, community open space, or from adjacent Lots. All devices shall be painted to blend with landscaping or the Lot as appropriate.

4.9 Windows and Window Covering Sheets, newspapers, and similar items may not be used as temporary window coverings. No aluminum foil, reflective screens, awnings, reflective glass, mirrors, or similar reflective materials of any type shall be placed or installed inside or outside of any windows of a Building without the prior written approval of the Board. Window drapes must be lined in a white or black, non-patterned material. No air conditioners, swamp coolers, or similar units may be placed in any window of a Building.

4.10 Ownership and Leasing Nothing in the Declaration shall be deemed to prevent the leasing of a Building on a Lot to a Single Family from time to time by the Owner of the Lot, subject to all of the provisions of the Documents. Any Owner who leases his Lot shall promptly notify the Association and shall advise the Association of the lease period and the name of each lessee and the address and telephone number at which the Lot Owner can be contacted by the Association during the lease term. Any lease shall be approved by the Association and shall be for a term of no less than thirty (30) consecutive days. No Owner shall be permitted to lease the Owner's Lot for transient or hotel purposes. The provisions of this Section 4.10 shall not apply to any Lot(s) owned by Declarant or Declarant's successor. Notwithstanding the foregoing, no more than an aggregate of five (5) Lots may be leased at any one time.

4.11 Machinery No machinery of any kind shall be placed, operated, or maintained upon or adjacent to any Lot other than machinery that is usual and customary in connection with the use, maintenance, or construction of a Building, including, but not limited to, equipment necessary for the emergency maintenance or operation of the Building and other than machinery that Declarant may require for the construction of the Buildings. All emergency equipment shall be removed from the Lot or Building as soon as reasonably possible.

4.12 Increased Risk Nothing shall be done or kept in or on any Lot or Building that will increase the rate of insurance on the Common Elements without the prior written consent of the Board, as determined in the sole and absolute discretion of the Board. No Owner shall permit anything to be done or kept on or in the Owner's Lot or the Common Elements that will result in the cancellation of insurance on any Lot or any part of the Common Elements or that would be in violation of any law.

4.13 Outdoor Burning and Lighting

(a) There shall be no outdoor burning of trash, debris, wood, or other materials.

(b) Without limiting the provisions of Section 4.4 above and except as originally installed by the Declarant or as otherwise approved by the Board, no spotlights, flood lights, or other high intensity lighting shall be placed or utilized upon any Lot so that the light is directed or reflected on any Common Element or any other Lot, provided, however, that safety lighting may be utilized so long as the same is low voltage, incandescent and indirect and is approved by the Board. Locations of all exterior landscape lighting of any type or nature must be shown on landscape plans approved by the Board prior to the installation thereof.

4 14 Hazardous Wastes Except as may be necessary for normal household, landscaping, or automotive uses, no Owner shall permit any hazardous wastes (as defined under all applicable federal and state laws), asbestos, asbestos containing material, or any petroleum products or by-products to be kept, dumped, maintained, stored, or used in, on, under, or over any Lot or the Common Elements. No gasoline, kerosene, similar cleaning solvents, or other flammable liquids may be stored on the Lots or the Common Elements.

4 15 Commercial and Recreational Vehicles No commercial truck, recreational vehicle, pick-up trucks with campers or camper shells, semi-trailer, wagon, freight trailer, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, personal watercraft, jet skis, dune buggy, all-terrain vehicle, bus, or similar commercial or recreational equipment or vehicle (whether or not equipped with any sleeping quarters) (collectively referred to in this Declaration as "Commercial or Recreational Vehicles") shall be stored or parked within the Lot unless such Commercial or Recreational Vehicles are in good working condition and repair and stored or parked completely within the garage space(s) of the respective Building on the Lot and are fully covered from view. The provisions of this Section 4 15 are subject to the rules and regulations of the Association, as may be amended.

4 16 General Restrictions Regarding Parking

(a) Additional Family Vehicles that cannot be parked in the garage that is part of the Building may be parked in any driveway for the Lot so long as the Family Vehicles are in good working condition, operable and are, in fact, operated from time to time. Except as may be otherwise expressly approved in advance by the Board, no Owner may use his garage for storage of anything other than parking of a Family vehicle, permitted under this Declaration. Any vehicle parked in the driveway of a Lot shall be removed for at least one continuous 24 hour period in every 7 days.

(b) A "Family Vehicle" means any domestic or foreign cars, station wagons, sport wagons, pick-up trucks, vans, mini-vans, jeeps, sport utility vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are used by the Owner of the applicable Lot or the Owner's Permittees for family and domestic purposes only, and which are sized to be capable of fitting within the garage of the Building on the Lot. A "Family Vehicle" also includes (i) pick-up trucks with no more than three-quarter (3/4) ton capacity with attached camper shells that are no more than eight (8) feet in height, measured from ground level, (ii) small motor homes of not more than eight (8) feet in height or more than eighteen (18) feet in length, and (iii) non-commercial pick-up trucks of greater than one (1) ton capacity that the Board determines, in advance of use, to be similar in size and appearance to smaller vehicles. A "Family Vehicle" does not include any of the commercial or recreational vehicles described in Section 4 15. The provisions of this Section 4 16 are subject to the rules and regulations of the Association, as may be amended.

4 17 No Vehicle Repairs Routine maintenance (other than the washing of a Family Vehicle) and repairs of Commercial and Recreational Vehicles or Family Vehicles shall not be performed on the Lot or anywhere else on the Common Elements. No vehicles of any type shall be constructed, reconstructed, or assembled anywhere within the Lot where they are visible from the Common Elements or from adjacent Lots.

4 18 Declarant's Exemption Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of model Buildings, structures, improvements, construction trailers, or signs necessary or convenient to the construction, development, identification, sale, or lease of Lots or Buildings.

4 19 Access Each Owner understands and agrees that neither the Association (nor its officers, directors, employees, and agents) nor the Declarant (nor its officers, directors, employees, and agents) is responsible for the acts or omissions of any third parties or of any other Owner or the Owner's Permittees resulting in damages or injury to person or property. Any entry gate features or common access measures that may be used at the Project will commence operation and be maintained by the Association solely through a majority vote of the Board, and each Owner understands that any entry gate features or security measures that are in effect at the time he or she accepts a deed for a Lot (or otherwise becomes an "Owner") may be abandoned, terminated, or modified by a majority vote of the Board. The installation or operation of access devices or controls (including, but not limited to, entry or limited access gates) shall not be, constitute, or be deemed to constitute (a) an assumption of any duty on

the part of the Association, Board of Directors or the Declarant with respect to the Project and its Owners, and (b) a representation or warranty by the Association, Declarant or Board of Directors to the Owners, Owners' Permittees or any other person that such devices or controls will serve as a deterrent to or prevent crime within the Project, or are meant to be 'security gates' of any nature whatsoever, regardless of any interpretation of a 'security gate' Further, in the event of a power failure to the Common Elements or to the entry gates, the entry gates will open and then remain in the open position until such time as the power is restored This is a mandated requirement to ensure the *unimpeded ability of Owners, guests or others within the Project with a right of ingress and egress in such circumstances* and may not be changed, altered, or prohibited at any time by an Owner, or by an action of the Board

4 20 Outdoor Gas Appliances and Barbecues Each Owner understands and agrees that gas appliances not installed by Declarant within the Building including, but not limited to, outside barbecues, heaters, lights and cooking devices of any kind whatsoever, shall be used only in any outdoor spaces on the Lot and shall be operated in a safe manner

4 21 Patio Covers and Storage Sheds Storage sheds shall only be allowed when they are lower than the Lot's surrounding walls and are the same architectural style as the Building constructed on the Lot All Storage sheds must be approved by the Board prior to construction or installation Patio covers that are permanent or semi-permanent attachments to the Building constructed on the Lot must be approved by the Board prior to construction or installation

4 22 Yard Art No works of art of any type or nature may be placed or located in a yard without the prior approval from the Board, as determined in the sole and absolute discretion of the Board

4 23 Outdoor Play Equipment Outdoor play equipment, including but not limited to children's swing sets, jungle gyms, slides and similar outdoor play equipment must be approved in writing by the Board prior to its installation All such outdoor play equipment shall be screened from view by walls or mature landscaping and shall be located on the rear yard of each Lot in a location approved by the Board All colors of the outdoor play equipment shall match the color of the Building constructed on the Lot

ARTICLE 5

MEMBERSHIP AND VOTING RIGHTS

5 1 Membership Every Owner of a Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner", shall be a Member of the Association and shall be bound by the provisions of the Documents, shall be deemed to have personally covenanted and agreed to be bound by all covenants and restrictions contained in the Documents, and shall be deemed to have entered into a contract with the Association, each other Owner and the Declarant for the performance of the respective covenants and restrictions The personal covenant of each Owner described in the preceding sentence shall be deemed to be in addition to the real covenants and equitable servitudes created by the Declaration, and this personal covenant of each Owner shall not limit or restrict the intent that this Declaration benefit and burden, as the case may be, and run with title to all Lots and Common Elements covered by this Declaration Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment Upon the permitted transfer of an ownership interest in a Lot, the new Owner shall automatically become a Member of the Association With the exception of Declarant, membership in the Association shall be restricted solely to Owners of Lots

5 2 Class The Association shall have two (2) classes of voting membership

(a) Class A Class A members shall be all Owners, with the exception of the Declarant Class A members shall be entitled to one (1) vote for each Lot owned When more than one person holds an interest in any Lot, all joint owners shall be Members, however, for all voting purposes and quorum purposes, they shall together be considered to be one (1) Member The vote for any jointly-owned Lot shall be exercised as the joint owners determine, but in no event shall more than one (1) vote be cast with respect to any Lot Any attempt to cast multiple votes for a given Lot shall result in the invalidity of all votes cast for that Lot Upon receipt by the Association of differing directions on how a jointly-owned

Lots' vote is to be cast, the Association may elect to disregard such vote until the differing instructions have been removed

(b) Class B The Class B member shall be the Declarant and shall be entitled to Five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the happening of any of the following events, whichever occurs earlier

(i) Four (4) months after the date when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership,

(ii) The date that is six (6) years after the date of the close of escrow on the first Lot sold by Declarant, or

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

Upon the conversion of Declarant's Class B membership to Class A membership, the Declarant will be entitled to only one (1) vote for each Lot owned by the Declarant. The period of time during which Class B membership is in existence shall be referred to in this Declaration as the period of "Declarant Control." For the purposes of determining when the total votes outstanding in the Class A membership first equals or exceeds the total votes outstanding in the Class B membership under Section 5.2(b)(1), the number of votes in the Association shall be based upon the total number of Lots

5.3 Transfer of Control

(a) When the period of Declarant Control ends, the Class A Members shall accept control of the Association from the Declarant and full responsibility for the operation of the Association and administration of the Association as provided in the Documents, and Declarant shall have no further responsibility for any future acts or omissions with respect to the operation of the Association and administration of the Project (other than the payment of assessments on Lots that the Declarant still owns). Any claims of the Association or any Owners against the Declarant for present or past acts or omissions of the Declarant or its members with respect to the operation of the Association or the administration of the Project (including the availability or sufficiency or any reserves) shall be waived, unenforceable, and released if not commenced within one (1) year from the expiration of Declarant Control

(b) Prior to such time as the Declarant Control ends

(i) The Declarant shall commission a study of the "Reserve Account," as defined in Section 6.2 hereof, by an independent third party ("Study") familiar with (A) the operations of associations similar to the Association, and (B) the type of common elements that may require maintenance, repair and/or replacement on a longer term basis. The Study shall determine which of the common elements of the Association should be considered within a reserve account for maintenance, and the estimated timing for preventative or restorative maintenance, and the projected cost therefore ("Repairs"). The Study shall indicate the required annual contribution from Assessments required to ensure all common elements are properly maintained or replaced as needed. On completion the Study shall be available for review by all Buyers prior to the Transition upon any Buyer's request from Seller, and shall also be available at the Transition meeting

(ii) The Study shall also determine the dollar amount of the Reserve Account to be contributed by the Declarant calculated as of the Transition date ("Payment"). This Payment shall equal to the difference between (A) the balance then existing in the operating capital account and the Reserve Account on the date the Declarant Control ends, and (B) the 100% funding level shown in the Study to undertake the Repairs. The Payment shall be made within seven (7) days of date of transfer of Declarant Control

(iii) In addition to the above Payment, the Declarant shall transfer within seven (7) days of the end of Declarant Control Association bank accounts in good standing and free from any claim whatsoever other than outstanding checks issued on behalf of the Association. Such good standing determination shall take into consideration the operating capital accounts payables, receivables (including unpaid Assessments outstanding), and disputed items.

ARTICLE 6
COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 Lien and Personal Obligation for Assessments Each Owner of any Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner", is deemed personally to covenant and agree to be bound by all covenants and restrictions and all duties, obligations, and provisions of the Documents and to pay to the Association

- (a) Annual assessments or charges which shall be payable in monthly installments,
- (b) Special assessments for capital improvements under Section 6.5 for unexpected or extraordinary expenses for repairs of the Common Elements, or other Association matters,
- (c) An amount sufficient to, on demand, indemnify and hold the Association harmless for, from, and against all obligations undertaken or incurred by the Association at or on account of that individual Owner's special request and to repay the Association for all expenditures on account of the special request,
- (d) An amount sufficient to reimburse the Association for the cost of performing any obligation of an Owner under the Documents that the Owner has failed to timely pay or perform, and
- (e) All other assessments as may be fixed, established, and collected from time to time as provided in this Declaration or the other Documents, including, without limitation, any accrued interest, taxable court costs, late fees, attorney fees, fines, penalties, or other charges.

The assessments and amounts described above, together with all accrued interest, court costs, attorney fees, late fees, and all other expenses incurred in connection with the assessments and amounts described above, whether or not a lawsuit or other legal action is initiated, shall be referred to in the Documents as an "assessment" or the "assessments". The assessments shall be a charge and a consensual and continuing lien upon the Lot against which the assessment is made or with reference to which each assessment is incurred. Each assessment also shall be the personal obligation of the person who was the Owner of the Lot at the time when the assessment became due or charge was incurred, or, in the case of more than one Owner, the personal obligation of each person, jointly and severally. The personal obligation for delinquent assessments shall not pass to the particular Owner's successors in title unless expressly assumed by them, however, the personal obligation of the prior Owner for the delinquent assessments or charges shall not be deemed released or discharged by reason of any assignment, conveyance, or transfer of title of a Lot. Notwithstanding the previous sentence, in the event of an assignment, conveyance, or transfer of title to any Lot, the assessment additionally shall continue as a charge against the Lot in the hands of the subsequent Owner, except in those circumstances described in Section 6.10. The recordation of this Declaration shall constitute record notice and perfection of any assessment or assessment lien, and, notwithstanding Section 6.11, further recordation of any claim of lien (or Notice and Claim of Lien) for assessment shall not be required for perfection, priority, or enforcement.

6.2 Purpose of Annual Assessments The annual assessments levied by the Association shall be used for the purpose of

- (a) promoting the recreation, health, safety, welfare, and desirability of the Project for its Owners,

(b) operating the Common Elements (including payment of all taxes, utilities, maintenance, and rubbish collection fees, if any, and if not individually billed to the Owners),

(c) insuring (including a reserve fund for insurance deductibles), maintaining, repairing, painting, and replacing improvements in the Common Elements (including any reserve fund for the foregoing), and

(d) enhancing and protecting the value, desirability, and attractiveness of the Lots and Common Elements generally, and

(e) providing for the accumulation of cash reserves to be used from time to time for Common Element maintenance, repair, replacement, or improvement as Common Elements reach the end of their useful life and for which the Association is responsible for maintaining ("Reserve Account")

The amount of Assessments shall be kept in bank accounts owned by the Association and the funds representing the assessments may be for costs and reserves described in Sections 6 2(b) and (e) may be segregated from other amounts collected by the Association To the extent Assessments are not needed on a current basis for (b) above, all remaining funds shall be used for the Reserve Account in (e) above

6 3 Annual Assessments, Commencement of Assessments The Declarant initially, and the Board after election, shall annually determine and fix the amount of the annual assessment against each Lot, effective as of January 1 of each year, and shall notify the Lot Owner in writing as to the amount of such annual assessment at least thirty (30) days in advance of each annual assessment period, however, the annual assessment shall be binding notwithstanding any delay The annual assessment (which shall be payable either in arrears or in advance, as determined by the Board of Directors) shall be payable by quarterly installments representing one-quarter ($1/4^{th}$) of the amount of the annual assessment due, and such installments shall be due and payable on the first day of each quarter, commencing January 1 annually Written notice of the annual assessment and of any special assessments shall be sent to every Owner subject to the assessment The Board is expressly authorized to adopt and amend budgets from time to time without the approval of the Members and shall provide a summary of such budget or amended budget to the Members not later than thirty (30) days after adoption of the same by Board The annual assessments established in this Declaration regarding the Lots subject to this Declaration shall commence on the first day of the month following the conveyance of the first Lot to an Owner other than the Declarant

6 4 Annual Assessment Increases

(a) Subject to the provisions of Section 6 4(b) and (c) hereof, the annual assessment in any given year over the annual assessment in the previous year may not be increased by more than the Permitted Percentage Increase (as defined below), unless any further additional increase is approved at a duly called regular or special meeting by an affirmative vote (in person or by proxy) of two-thirds ($2/3$) or more of the total number of eligible votes cast at that meeting in each class of Members Subject to the provisions of Section 6 4(b) from and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the Declarant ("base year"), the Board, without a vote of the Members, may increase the maximum annual assessments during each fiscal year of the Association by an amount ("Permitted Percentage Increase") equal to the greater of (i) five percent (5%), (ii) a percentage calculated by dividing the Consumer Price Index in the most recent October (identified by an "A" in the formula below) by the Consumer Price Index for the October one (1) year prior (identified by a "B" in the formula below), minus one (1) (i.e., $CPI\ percentage = (A/B) - 1$) By way of example only, the percentage increase in the assessment for 2006 cannot be increased by more than the greater of (I) five percent (5%), or (II) the increase in the Consumer Price Index for October, 2005, divided by the Consumer Price Index in October, 2004), minus one (1) The term "Consumer Price Index" shall refer to the "United States Bureau of Labor Statistics, Consumer Price Index, United States and selected areas, all items" issued by the U S Bureau of Labor Statistics for the Western States, or its equivalent or revised or successor index

(b) To the extent the Board of Directors does not increase the annual assessment in any given year by the amounts described in either Section 6 4(a)(i) or (ii), a five percent (5%) increase in the Annual

Assessment shall be automatically deferred ("Deferred Percentage") until such time as the Board increases the Annual Assessment under the provision of either Section 6 4(a) or 6 4(c)

(c) Notwithstanding the provisions of Section 6 4(a), to the extent a Deferred Percentage exists, the Board, without a vote of the Members, may increase the maximum annual assessments during a fiscal year by an amount not to exceed the lesser of (i) the Deferred Percentage plus the amount of increase permitted under Section 6 4(a)(i) for the year in which the increase is to occur, or (ii) fifteen percent (15%), provided, however, the Deferred Percentage for a particular year is no longer available for use by the Board in increasing the annual assessment if the Board elects to increase the Annual Assessment under Section 6 4(a) in a subsequent year

Example No 1 By way of example and not limitation, in the event that the annual assessment is not increased by the Board under Section 6 4(a)(i) or (ii) for the fiscal years 2006, 2007 and 2008, and assuming the Board elects to increase the Annual Assessment in 2009, the Board may increase the Annual Assessment by the lesser of (i) the Deferred Percentage Increase of five percent (5%) from fiscal years 2006, 2007, 2008 and the permitted increase of 5% under Section 6(a)(i) for fiscal year 2009 (a total of 20%), or (ii) 15% Accordingly, under Example No 1 the maximum increase permitted under Section 6 4 (c) is the lesser of 20% or 15%, which is fifteen percent (15%)

Example No 2 By way of example and not limitation, in the event that the annual assessment is not increased by the Board of Directors under 6 4(a) (i) or (ii) in fiscal year 2006 and the Annual Assessment is increased by four percent (4%) by the Board of Directors in fiscal year 2007, if the Board elects to increase the Annual Assessment in fiscal year 2008, the Board may increase the annual assessment by the amount of the Permitted Percentage Increase under the provisions of Section 6 4(a) and any increase is not permitted under the provisions of Section 6 4(c) Under Example No 2, when the Board increased the Annual Assessment in the year 2007 under Section 6 4(a), the Deferred Percentage from the year 2006 was no longer available for use by the Board for an increase in fiscal year 2008

6 5 Special Assessments The Association, at any time and from time to time in any assessment year, in addition to the annual assessments authorized above or any other assessments authorized elsewhere in this Declaration, may levy a special assessment against all of the Members for the purpose of defraying, in whole or in part (i) the cost of any construction, reconstruction, repair, or replacement (whether or not due to destruction, governmental taking, or otherwise) of a capital improvement upon or under the Common Elements (including fixtures and personal property related to the Common Elements) and for which adequate Reserves do not exist, or (ii) the cost of any other unexpected or extraordinary expenses for repairs of the Common Elements or other association matters, however, any special assessment must be approved at a duly called regular or special meeting by an affirmative vote (in person or by proxy) of two thirds (2/3) or more of the total number of eligible votes cast at that meeting in each class of Members Notwithstanding the foregoing, no approval of the Members shall be needed to levy assessments on an Owner that arise out of the Owner's failure to comply with the Documents including, without limitation, any assessment levied pursuant to Sections 6 1(c), 6 1(d), 6 7, 7 2 or 7 4 of the Declaration

6 6 Notice and Quorum Written notice of any meeting called for the purpose of taking any action authorized under Section 6 4 or 6 5 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting At the first meeting called regarding any given proposal, the presence (at the beginning of the meeting) of Members or proxies entitled to cast at least sixty percent (60%) of the total number of eligible votes of the Association, regardless of class of membership, shall constitute a quorum If the required quorum is not present, one other meeting for the same purpose may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be at least thirty percent (30%) of the total number of eligible votes of the Association, regardless of class of membership No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting

6 7 Allocation of Assessments

(a) Each Lot shall be allocated one-twenty-third (1/23rd) of the annual assessments outlined in Section 4 3 and the special assessments outlined in Section 4 4

(b) The rate of assessment for Inventory Lots owned by Declarant shall be twenty-five percent (25%) of the rate for completed and occupied Lots owned by an Owner other than the Declarant. Declarant shall commence payment of the reduced assessment concurrent with the obligation arising on the first Owner as provided in section 6.3. Notwithstanding the reduced assessment on Inventory Lots, Declarant shall be obligated to pay to the Association for any shortages or deficiencies in the Association's operating budget caused by reason of Declarant's reduced assessments, however, Declarant's maximum obligation for these shortages or deficiencies shall be equal to the uniform rate of assessment on all Lots multiplied by the number of Inventory Lots upon which Declarant paid a reduced assessment, less all amounts previously paid by Declarant as reduced assessments on the Inventory Lots. In no event shall the Board be entitled to incur expenses that would cause the Declarant to make a payment as described above unless all such expenses are first shown by the Board to be reasonable and customary budgeted amounts.

(c) The provisions of this Section 6.7 shall not preclude the Association from making a separate or additional charge to, or special assessment on, an Owner for or on account of special services or benefits rendered to, conferred upon, or obtained by or for that Owner or the Owner's Lot. If any expense incurred by the Association is caused by the misconduct of any Owner or the Owner's Permittees, the Association may specially assess the expense exclusively against the offending Owner and/or Lot.

6.8 Transfer The Association, acting through the Board of Directors and/or a property management company, upon written demand and for a reasonable charge (currently \$150.00 per request, subject to change by the Board), shall furnish to any Owner or the Owner's authorized representative a certificate signed by an officer of the Association setting forth whether the assessments and charges on a specified Lot have been paid and setting forth any other matters as may be required from time to time by Arizona law. A properly executed certificate of the Association as to the status of assessments on a Lot and any other required matters shall be binding on the Association as of the date of issuance of the certificate and for the time period specified in the certificate. Assessments shall be payable in the full amount specified by the assessment notice, and no offsets against such amount shall be permitted for any reason whatsoever including, without limitation, abandonment of the Owner's Lot, a claim that the Association is not properly exercising its duties in maintenance or enforcement, a claim against the Declarant or its affiliates, or the non-use or claim of non-use by Owner of all or any portion of the Common Elements. Upon any transfer of a Lot, the Owner acquiring the Lot shall pay to the Association as a working capital contribution an amount equal to one sixth (1/6) of the annual assessment then in effect (the "Working Capital Contribution"). The payment of the Working Capital Contribution shall not constitute a credit against the amounts owed by an Owner for annual assessments or special assessments.

6.9 Effect of Nonpayment of Assessments - Remedies of the Association Any assessment not paid within fifteen (15) days after the due date shall be subject to a one-time late charge of Twenty-Five and No/100 Dollars (\$25.00) and additionally shall bear interest from the due date at the minimum rate of twelve percent (12%) per annum or any other legal interest rate approved by the Board of Directors. Notwithstanding the foregoing, the Board of Directors may approve changes to the assessment collection procedure. Each Owner of a Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument), or otherwise becoming an "Owner", vests in the Association and its agents the right and power to bring all actions against the Owner personally for the collection of all assessments due under the Documents as a debt and to enforce the lien securing the assessment by all methods available for the enforcement of liens, including foreclosure by an action brought in the name of the Association in the same manner as a mortgage of real property, a deed of trust, and/or a mechanic's lien. If an Owner fails to make payments on any prior liens (including any Mortgage) or fails to pay taxes on the Owner's Lot, the Association may make payments on any prior liens (including any Mortgage) or taxes on the Lot, and all payments shall be due and payable immediately as a special assessment and shall be added to the lien in favor of the Association. The lien shall be in favor of and shall benefit the Association. The Association shall have the power to bid in any foreclosure, sheriff's sale, or similar sale (whether or not the foreclosure was initiated by the Association or some other person) and to acquire, hold, lease, mortgage, and convey the Lot purchased. The Association may institute suit to recover a money judgment for unpaid assessments of the Owner without being required to foreclose its lien on the Lot involved and without waiving the lien that secures the unpaid assessments. Any foreclosure may be instituted without regard to the value of the Lot, the solvency of the Owner, or the relative size of the Owner's default. The assessment lien and the rights of enforcement under this Declaration shall be in

addition to and not in substitution of all other rights and remedies that the Association may have under the Documents or under Arizona law

6 10 Subordination of the Lien to Mortgages Regardless of whether or not a Notice and Claim of Lien has been recorded, the lien for the assessments established in this Declaration shall be superior to all liens, charges, homestead exemptions, and encumbrances that are imposed on any Lot after the date of recordation of this Declaration. The lien for the assessments established in this Declaration, however, shall be automatically subordinate to (i) the lien of any First Mortgagee, except for the amount of assessments that accrues from and after the date upon which the First Mortgagee acquires title to or comes in possession of any Lot and except for amounts due to the Association as a result of the exercise of its self-help and lien rights described in Section 7 4 , and (ii) any taxes, bonds, or assessments that by law are prior and superior to the assessment lien. The sale or transfer of any Lot shall not affect the lien for assessments or the personal obligation of the Owner to pay all assessments arising during the Owner's ownership of the Lot, however, the sale or transfer of any Lot pursuant to a judicial foreclosure or trustee's sale by a First Mortgagee shall extinguish that portion of the lien on the Lot (but not the personal obligation) that became due prior to the transfer or sale. In the case of a sale or transfer by judicial foreclosure or trustee's sale by a First Mortgagee, the First Mortgagee or other successor Owner shall not be liable for any assessments that become due prior to the sale or transfer by the First Mortgagee. No sale or transfer pursuant to a judicial foreclosure or trustee's sale of any First Mortgagee shall relieve any Lot from the liability or the lien for any assessments that may become due or arise after the judicial foreclosure or trustee's sale. A sale or transfer pursuant to a judicial foreclosure or trustee's sale, however, shall not be construed to release any Owner or previous Owner from the Owner's personal obligation to pay any assessment arising during the Owner's or previous Owner's ownership of the Lot, and the Association may enforce the personal obligation to pay the assessments arising during the Owner's ownership of the Lot in any manner permitted under Arizona law or the Documents.

6 11 Notice of Lien Without affecting the priority and perfection of any assessment that has been perfected as of the date of recordation of this Declaration, the Association may give (but is not obligated to give) notice to any Owner whose assessment is due and unpaid by mailing to the Owner a copy of a "Notice and Claim of Lien" which may state, among other things, the following:

- (a) The last known name of the delinquent Owner,
 - (b) The legal description or street address of the Lot against which the claim of lien is made,
 - (c) The amount claimed to be due and owing from the Owner and assessed against the Lot,
- and
- (d) A statement that the claim is made by the Association pursuant to the terms of the Declaration and the other Documents.

Each default in the payment of any assessment shall constitute a separate basis for a claim of lien, but any number of defaults may be included within a single Notice and Claim of Lien. The Association may record a Notice and Claim of Lien against the delinquent Owner's Lot. The Notice and Claim of Lien may be executed by any officer of the Association, the managing agent for the Association, or legal counsel for the Association, but in all events the lien will remain that of the Association.

6 12 Initial Working Capital Contribution by Owners Upon acceptance of a deed for a Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner", each Owner (except for Declarant) shall contribute to the Reserves of the Association an amount equal to one-sixth (1/6) of the annual assessment then in effect as determined in accordance with this Article 6. Reserve payments shall be collected only upon the sale of the Lot by the Declarant and will not be collected on subsequent resale. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed from the purchase and sale escrow directly to the Association. All reserve payments to the Association will be deposited in the Association's Reserve account or separately accounted for in the Association's operating account as a Reserve fund, and all Reserve funds shall only be used as directed by the Board as determined by the Board in its sole discretion. During the period of

Declarant control, neither the Association nor the Declarant shall use any of the Reserves to defray the Declarant's expenses for maintaining the Common Elements or construction costs or for ordinary expenses of the Association

Declarant, in Declarant's sole discretion, may advance certain amounts to the Association as working capital, however, Declarant shall not be obligated to advance any amounts for working capital. If Declarant elects to advance any amounts for working capital, Declarant shall be entitled to a reimbursement from the Association, upon Declarant's demand, for all working capital funds previously advanced by Declarant. Except for those amounts paid by Declarant, all amounts paid as working capital shall be non-refundable and shall not act as a credit against any assessment due and owing by an Owner under the terms and conditions of this Declaration.

ARTICLE 7

COMMON ELEMENTS AND LOT MAINTENANCE

7.1 Common Elements Except as provided in Sections 7.2 or 7.3 below, the Association shall be responsible for the maintenance, repair, and replacement of the Common Elements. Without any approval of the Owners, the Association may (i) reconstruct, repair, replace, and refinish any Common Elements, (ii) maintain, repair, and landscape any shared entry area for the Project (whether established through easement, license, or otherwise), and (iii) do any other acts deemed necessary to preserve, beautify, and protect the Common Elements in accordance with the general purposes specified in the Documents. The Board of Directors of the Association shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements. Notwithstanding anything contained in this Section 7.1, the Association will have no obligation to perform any maintenance or repair work that is performed by any municipality or provider utility company responsible for the maintenance of any utilities or improvements located within any Common Elements. No Owner may alter, remove, injure, damage, or interfere in any way with any landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like, if any, placed on the Common Elements. To the extent reasonably practical, the Association shall provide notice to the owners affected by maintenance, repair and replacement described in this Section 7.1 at least two (2) days prior to the commencement of such work, unless such maintenance, repair and replacement is deemed to be an emergency by the Board of Directors, in which event the Association shall be under no obligation to provide notice to the Owners affected by such work.

7.2 Repairs Necessitated by Owner In the event that the need for maintenance or repair to the Common Elements is caused through the acts or omissions (including negligent acts or omissions) of an Owner, the Owner's Permittees, or any pet of the Owner, the cost of the maintenance or repairs, including the deductible portion of any applicable insurance policy, shall be added to and become a part of the assessment against the Lot owned by that Owner, without regard to the availability of any insurance proceeds payable to the Association for the cost of the maintenance or repairs. In addition to the foregoing, if the Owner of a given Lot is held liable to the Association by a court of competent jurisdiction for maintenance or repair work performed by the Association to any other Lot (i.e., a Lot not owned by that Owner), the amount of that judgment shall be added to and become a part of the assessment against the Lot owned by that Owner.

7.3 Maintenance of Lot and Building By Owner It is the responsibility of each Owner to maintain, repair, replace and insure, at the Owners' expense and without disturbance to the rights of other Owners

- (a) All Buildings located on the Lot,
- (b) The portion of the Lot constituting the yard,
- (c) All other portions of the Lot

7.4 Owner's Required Insurance Each Owner of a Lot, at such owner's sole cost and expense, shall purchase and maintain in full force and effect property and liability insurance covering all types of property described in Section 7.3. Such insurance shall be written on a Special Form "All Risk" policy provided by a reputable insurer that is authorized and qualified to do business in the State of Arizona and shall include coverage for such property on a replacement cost basis. Owner shall provide a certificate of such insurance to the Association, and shall maintain such insurance in full force and effect at all times that the Owner owns the Lot.

7.5 Owner's Failure to Maintain. If an Owner fails to perform any items of maintenance and repair required under the terms of this Article 7, then, upon the vote of a majority of the Board of Directors and after not less than thirty (30) days prior written notice to that Owner and the holder of any applicable First Mortgage, the Association shall have the right (but not the obligation) to enter upon or into that Lot to provide the required maintenance or make the required repairs or replacements. Any entry by the Association or its agents shall not be considered a trespass. The cost of these maintenance items and repairs shall be added to the assessments charged to the Owner, shall be paid immediately to the Association by that Owner as a special assessment or otherwise, and shall constitute a lien upon that Owner's Lot. The rights of the Association described above are in addition to any other remedies available to the Association under the Documents or Arizona law.

7.6 Exterior Repairs and Alterations. No Owner will be permitted to change any exterior color, architectural elements, style, or condition of the Building without the prior approval of the Board, which approval or disapproval may be granted or withheld in the sole and absolute discretion of the Board of Directors. The Board shall adopt a set of guidelines in this regard if desired, which may include landscape guidelines. Each Owner shall install landscaping in the yard of the Lot within 90 days of closing escrow on the Lot and becoming an Owner pursuant to plans and specifications approved by the Declarant or Board of Directors pursuant to the provisions of Section 4.3 hereof.

7.7 General Standards. Except as may be otherwise provided in this Declaration or the other Documents, each respective Owner of a Lot shall maintain the areas they are respectively responsible for, including, but not limited to, all portions of the Building and yard on the Lot, at a level of general maintenance at least equal to that prevailing with respect to areas of a similar nature located in residential communities commonly and generally deemed to be of the same quality as the Project.

7.8 Utilities. Except for those utility costs that are metered collectively for the Common Elements and paid by the Association as a common expense, all utilities for individual Lots will be metered separately to each Lot and will be the responsibility of the respective Owners for payment.

7.9 Streets. Vehicular access to the Lots is through private streets constructed within the Common Elements. The cost of repair and maintenance of the private streets shall be shared equally by all Owners of the Lots, and the Association shall be responsible to maintain and ensure fulltime access through the streets, subject to temporary disruption for necessary repairs by easement holders or utility companies.

ARTICLE 8

DUTIES AND POWERS OF THE OWNERS' ASSOCIATION

8.1 Duties and Powers. In addition to the duties and powers enumerated in the other Documents or elsewhere in the Declaration, the Association, through its Board of Directors, shall have the power and authority to:

(a) Common Elements. Maintain and otherwise manage the Common Elements and all other real and personal property that may be acquired by the Association;

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

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

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

(e) Purchase Insurance Purchase insurance for the Common Elements for risks, with companies, and in amounts as the Board determines to be necessary, desirable, or beneficial, subject to the provisions of Section 8 2 below,

(f) Other Perform other acts authorized expressly or by implication under this Declaration and the other Documents including, without limitation, the right to construct improvements on the Common Elements, and

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

8 2 Insurance

(a) Liability Insurance Prior to the first conveyance of a Lot to an Owner other than Declarant, commercial general liability insurance covering the Common Elements shall be purchased and obtained by the Board, or acquired by assignment from Declarant, promptly following the Board's election, and shall be maintained in force at all times. The premiums for all insurance required under Section 8 2(a) shall be paid out of the Association's funds. The insurance shall be carried with reputable companies authorized and qualified to do business in Arizona. The insurance shall have a minimum limit of \$2,000,000 combined single limit per occurrence, or such other amount as determined to be appropriate by the Board of Directors. The insurance shall name the Association as the first named insured, with the Association's directors, officers, employees, and agents acting in the scope of their employment and with the Owners' and the Declarant and Declarant's directors, officers, partners, employees, and agents included as additional insured so long as Declarant owns any Lot. This policy shall include, but need not be limited to, insurance against injury or damage occurring in or on the Common Elements

(b) Property Insurance - Master Policy for Common Elements A master property insurance policy shall be purchased or obtained by the Board or acquired by assignment from Declarant promptly following the construction of any permanent structure on the Common Elements. Once purchased, obtained, or acquired, this property insurance policy shall be maintained in force at all times by the Association and such policy will provide coverage of the Common Elements only to the edge of the Lot boundaries. Everything within the bounds of the planes described in Section 2 3 as the boundaries of the Lot (including but not limited to the types of property described in Section 7 3 hereof) is the responsibility of the Owner of the Lot, including the Building and all other improvements constructed on the Lot. Personal property within a Lot must be insured by the Lot Owner. The premiums for the property insurance policy contemplated by the first sentence of this Section 8 2(b) shall be paid out of the Association's funds at the common expense of the Owners. The property policy shall be carried with reputable companies authorized and qualified to do business in the State of Arizona and shall be written on a Special Form "All Risk" policy providing coverage for the full replacement cost of all of the Common Elements (excluding land, foundations, excavations, and other items that are usually excluded from insurance coverage). The property insurance policy shall be in an amount determined from time to time by the Board in its sole discretion. The property insurance policy shall name the Declarant (for so long as Declarant owns a Lot), Association, and any First Mortgagee of the insured permanent improvements on the Common Elements as insured's, as their respective interests may appear

(c) Other Insurance The Board may purchase (but is not obligated to purchase) additional insurance as the Board may determine to be advisable or necessary including, but not limited to, workmen's compensation insurance, demolition insurance to remove improvements that are not rebuilt, flood insurance, fidelity bonds, director and officer liability insurance, and insurance on personal property owned by the Association. All premiums for these types of insurance and bonds shall be paid out of the Association's funds. The Association may assess the Owners in advance for the estimated cost of these types of insurance. By virtue of owning a Lot subject to this Declaration, each Owner covenants and agrees with all other Owners and the Association that each Owner shall carry insurance on the Owner's Lot

in accordance with the provisions of Section 7.4 hereof. Without limiting any other provision of the Declaration (including, but not limited to Section 7 hereof), it shall be each Owner's sole responsibility to secure comprehensive personal liability insurance, theft, fire, multi-peril, and other property insurance covering loss or damage to the Owner's Lot, and any Building constructed thereon, personal property, furniture, fixtures, and any other insurance not carried by the Association that the Owner desires.

(d) General Provisions on Insurance The Board of Directors of the Association is granted the authority to negotiate loss settlements with the appropriate insurance carriers covering insurance purchased and obtained by the Association pursuant to Section 8.2. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and their signatures shall be binding on the Association and the Members. The deductible under any insurance policy shall be paid by the party who would be responsible for the repair in the absence of insurance and, in the event multiple parties are responsible but without waiving any right to enforce joint and several liability, the deductible shall be allocated in relation to the amount each party's responsibility bears to the total loss, as determined by the Board. Where possible, each insurance policy maintained by the Association must require the insurer to notify the Association in writing at least ten (10) days before the cancellation or any substantial change to the Association's insurance.

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

(f) Provisions Required The commercial general liability insurance referred to in Section 8.2(a) and, if applicable, the property insurance policy referred to in Section 8.2(b) shall contain the following provisions (to the extent determined by the Board of Directors to be available at a reasonable cost):

(i) Any "other insurance" clause shall exclude insurance purchased by any Owners or First Mortgagees,

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

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

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

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

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

(vii) Any insurance trust agreement shall be recognized, and

(viii) "Agreed Amount," "Construction Code," "Special Condominium," and "Inflation Guard" endorsements shall be obtained, when available and when determined appropriate by the Board

8 3 Other Duties and Powers The Association, acting through the Board and if required by this Declaration or by law or if deemed necessary or beneficial by the Board for the operation of the Association or enforcement of this Declaration, shall obtain, provide, and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or insurance, or pay any taxes or assessments. If, however, any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are specifically provided or apply to particular Lots, the cost shall be specially assessed to the Owners of these Lots

8 4 Association Rules By a majority vote of the Board, the Association, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal rules and regulations for the Project. The Association Rules may restrict and govern the use of any Common Elements by any Owner or the Owner's Permittees or the Owner's pets and additionally may establish a system of fines and charges for violations of the Documents, however, the Association Rules may not discriminate among Owners. A copy of the Association Rules shall be available for inspection by the Members at reasonable times. The Association Rules shall not be interpreted in a manner inconsistent with this Declaration or the Articles or Bylaws, and, upon adoption, the Association Rules shall have the same force and effect as if they were set forth in full and were a part of this Declaration. Provided, however, in the event of a conflict between the Association Rules and this Declaration, the terms and conditions of this Declaration shall control

ARTICLE 9 CONDEMNATION

9 1 Taking If, at any time during the term of this Declaration, all or any part of a Lot is taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in advance of any taking (collectively referred to as "taking", "taken", or "condemned"), the provisions of this Article 9 shall apply

9 2 Award All compensation, damages, or other proceeds from the taking shall be payable to the Owner. Any payment made for a taking shall be called the "Award"

9 3 Total Condemnation In the event that the entire Project is taken or condemned, the Association shall terminate. The Award shall be apportioned among the Owners ratably according to their Fractional Interests, however, if a different standard is employed in the valuation used to measure the Award in the negotiation, judicial decree, or otherwise, the same standard shall be employed to determine the apportionment among the Owners to the extent it is relevant and applicable. On this basis, the Association, as soon as practical, shall determine the share of the Award to which each Owner is entitled. All shares shall be paid into a separate account and be disbursed as soon as practicable by check payable jointly to the Owners and their respective First Mortgagees

9 4 Partial Condemnation

(a) In the event that less than the entire Project is taken or condemned, the Association shall not terminate. Each Owner shall be entitled to the Award for their respective Lot and the Owner of such Lot shall be entitled, on notice to the Board, to settle or compromise the taking as the Owner so desires and all Award proceeds therefrom shall be payable solely to that Owner. The Association shall be entitled to maintain its own action for any partial taking against the condemning authority for the loss of value to the Association of the Lot, and any proceeds received therefrom are solely to the benefit of the Association and shall not be considered an Award

(b) Any remnant of a Lot remaining after part of a Lot is taken becomes a Common Element

(c) If part of the Common Elements is acquired by condemnation or a taking, the portion of the Award attributable to the Common Elements taken shall be paid to the Association for the benefit of the Lot Owners not otherwise receiving the Award

9 5 Reconstruction Any reconstruction and repair necessitated by a partial taking shall be governed by the procedures specified in Article 10

9 6 Separate Compensation Nothing contained in this Article 9 shall restrict the rights of lessees, mortgagees, the Declarant, or any other person holding an interest in a Lot or its Common Elements from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this Article 9 and A R S § 33-1206 (as and if amended)

ARTICLE 10

INSURED PROPERTY

10 1 Attorney-in-Fact The Owners irrevocably appoint the Board as their true and lawful agent and attorney-in-fact (in their name, place, and stead) for the purpose of dealing with damage to the Common Elements in the event of its damage or destruction including, but not limited to, the right to negotiate with any insurer and adjust any loss covered by the insurance required under Section 8 2 of this Declaration Each Owner by becoming an Owner of a Lot shall automatically constitute appointment of the Board as its agent and attorney-in-fact for the purposes outlined in Article 10 of this Declaration

10 2 Restoration The Board shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument required to repair and reconstruct the Common Elements to substantially the same condition that existed prior to the damage The proceeds of any insurance collected shall be used by the Board for the purpose of repair and reconstruction unless the repair or replacement would be illegal under any state or local health or safety statute or ordinance If the damaged property is to be repaired and restored, no Lot Owner or lienholder is entitled to receive payment of any portion of the proceeds of any insurance unless there is a surplus of proceeds after the damaged property has been completely repaired or restored

10 3 Costs As soon as practicable after a casualty event, the Board shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of the Common Elements or that portion of the Common Elements that were damaged or destroyed

10 4 Common Elements The Common Elements shall be repaired as promptly as possible by the Board as attorney-in-fact for the Owner or Owners, whether insurance proceeds are sufficient to cover the partial damage or not, and any cost of the repair or reconstruction in excess of insurance proceeds available and reserves, if any, shall be assessed as a Common Expense

10 5 Insurance Trustee, Proceeds

(a) All insurance proceeds payable on account of damage or loss to the Common Elements shall be adjusted with the Association and shall be paid to any bank in Arizona that is selected as a trustee by the Board as the "Insurance Trustee" The Insurance Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of policies, or for the failure to collect any insurance proceeds Insurance proceeds payable on account of loss or damage shall be payable to and used by the Association to repair the loss or damage in accordance with the provisions of this Article 10

(b) The duty of the Insurance Trustee shall be to receive the insurance proceeds that are paid, and to hold them in trust for the benefit of the Owners and the First Mortgagees as their interests may appear as follows (i) an undivided share of the proceeds on account of damage to the Common Elements shall be allocated to the Owners according to their Fractional Interests, (ii) proceeds, if any, on account of damage to Lots shall be held for the Owner of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, as determined by the Board In the event a mortgagee endorsement has

been issued as to a Lot, the share of the Owner shall be held in trust for the First Mortgagee and the Owner as their interests may appear

10 6 Manner of Disbursement The proceeds from assessments and insurance received by the Insurance Trustee shall be disbursed towards the payment of repair of the Common Elements, and following such repair any remaining proceeds shall be disbursed to the Owners

10 7 Information All repair and reconstruction work shall be done by licensed contractors of good reputation. Payment bonds, performance bonds, and statutory lien bonds may be required in the discretion of the Board, but all work shall be done under written contracts

ARTICLE 11

GENERAL PROVISIONS

11 1 Enforcement The Association, in the first instance, or any Owner, should the Association fail to act within a reasonable time after notice from an Owner of the violation or infraction, shall have the right to enforce by any proceeding at law or in equity all covenants and restrictions now or hereafter imposed by the provisions of this Declaration, or the other Documents. Subject to the limitations established in Article XII below with respect to the negotiation, mediation, or arbitration of any disputes, the right to enforce all covenants and restrictions includes the right to bring an action at law, in equity, or both. Failure of the Association or any Owner to enforce any covenant and reservation in this Declaration or in the other Documents shall not be deemed a waiver of the right to do so thereafter. No act or omission by Declarant shall act as a waiver or defense to the enforcement of this Declaration by the Association or any Owner. Deeds of conveyance for any Lot may incorporate the covenants and restrictions by reference to this Declaration, however, each and every covenant and restriction shall be valid and binding upon the respective grantees whether or not any specific or general reference is made in the deed or conveying instrument. Violators of any one or more of the covenants and restrictions may be restrained by any court of competent jurisdiction and damages awarded against the violators. The remedies established in this Declaration may be exercised jointly, severally, cumulatively, successively, and in any order. A suit to recover a money judgment for unpaid Assessments, interest, fines, rent, costs, attorney fees, or an other amount due, to obtain specific performance, or to obtain injunctive relief may be maintained without the foreclosing, waiving, releasing, or satisfying the liens created under this Declaration. Each Owner of a Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner," specifically acknowledges that any award of monetary damages made in favor of the Owner against the Association for the Association's failure to comply with, or accurately comply with, the provisions of A R S § 33-1806 will be satisfied from and limited solely to (i) the proceeds available under any policy of insurance maintained by the Association for errors or omissions of this type, or (ii) the amount available in any liability reserve account that may be established by the Association and funded through specific liability reserves collected as part of the annual assessments

11 2 Approval of Litigation

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

(b) Member Approval of Association Litigation The Members' approval to initiate legal proceedings or join as a plaintiff in legal proceedings must be given at any duly called regular or special

meeting of the Members by an affirmative vote (in person or by proxy) of more than 50% of the total number of eligible votes of the Members, excluding the vote of any Owner who would be a defendant in the proceedings

(c) Prior Approval Disclosures Prior to any vote of the Members, the Association will provide full disclosure of the nature of the claim, the name and professional background of the attorney proposed to be retained by the Association to pursue the matter, a description of the relationship (if any) between the attorney and the Board of Directors (or any member of the Board of Directors) or the property management company, a description of the fee arrangement with the attorney, an estimate of the fees and costs necessary to pursue the claim, and the estimated time necessary to complete the proceedings

(d) Litigation Fund The costs of any legal proceedings initiated or joined by the Association that are not included in the above exceptions (i.e., Section 11 2(a)(i) through (vi) above) must be financed by the Association with monies that are specifically collected for that purpose, and the Association will not borrow money, use reserve funds, use general funds, or use monies collected for other Association obligations (such as working capital requirements) to initiate or join any legal proceeding. The Association shall not commence suit until the anticipated legal costs have been received in the Association accounts to fund the anticipated costs of the proceeding in full

(e) Written Notification to Prospective Purchasers and Acknowledgment In connection with the sale of the Owner's Lot, each Owner must provide all prospective purchasers of the Owner's Lot with (i) a written description of all legal proceedings initiated or joined by the Association for which a special litigation fund has been established, and (ii) a copy of any written notice received by the Owner from the Association regarding the litigation. Prior to the closing of a sale of an Owner's Lot, the Owner selling the Lot shall provide to the Association an Acknowledgment, executed by the purchaser, acknowledging receipt of the information required under this Section 11 2(e)

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

(g) Legal Proceedings As used in this Section 11 2, the term "legal proceedings" includes administration, arbitration, and judicial actions including any matters covered by the alternative dispute resolution procedures described in Article XII below

11 3 Severability Invalidation of any one or any portion of these covenants and restrictions by judgment or court order shall not affect the validity of any other provisions of the Documents, which shall remain in full force and effect

11 4 Term The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years for so long as the Lots continue to be used for Single Family Residential Uses or unless terminated under Article 13

11 5 Amendment

(a) Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights, during the first twenty (20) year term of this Declaration amendments shall be made only by a recorded instrument executed on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association, and any

amendment shall be deemed adopted if approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of seventy-five (75%) or more of the total number of eligible votes in the Association. After the initial twenty (20) year period, amendments shall be made by a recorded instrument approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of sixty percent (60%) or more of the total number of eligible votes in the Association, and the amendment shall be executed on behalf of the Association by an officer of the Association designated for the purpose or, in the absence of designation, by the President of the Association. In addition to and notwithstanding the foregoing, any amendment to the uniform rate of assessments established under Section 6.3 above shall require the prior written approval of sixty-seven percent (67%) or more of the holders of First Mortgages on the Lots.

(b) Except to the extent expressly permitted or required by the Act, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Lots or change the boundaries of any Lot, the allocated Fractional Interest of a Lot, or the use as to which any Lot is restricted, in the absence of unanimous consent of the Owners.

(c) An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing.

(d) During the period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to (i) to exercise any Development Right or Special Declarant Right, or (ii) comply with any applicable law if the amendment does not adversely affect the rights of any Lot Owner, or (iii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Lot Owner.

11.6 Construction This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a residential project consisting of Lots and Common Elements with maintenance as provided in this Declaration and the other Documents. Section and Article headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration (including any defined terms), regardless of the number and gender in which they are used, shall be deemed and construed to include any other number and any other gender as the context or sense of this Declaration may require, with the same effect as if such number and words had been fully and properly written in the required number and gender. Whenever the words and symbol "and/or" are used in this Declaration, it is intended, if consistent with the context, that this Declaration be interpreted and the sentence, phrase, or other part be construed in both its conjunctive and disjunctive sense, and as having been written twice, once with the word "and" inserted, and once with the word "or" inserted, in the place of words and symbol "and/or". Any reference to this Declaration shall automatically be deemed to include all amendments to this Declaration.

11.7 Notices Any notice permitted or required to be delivered may be delivered either personally, by mail, or by express delivery service. If delivery is made by mail, it shall be deemed to have been delivered and received two (2) business days after a copy of the notice has been deposited in the United States mail, postage prepaid, addressed to each person at the address given by such person to the Association for the purpose of service of such notice. If delivery is made by express delivery service, it shall be deemed to have been delivered and received on the next business day after a copy of the notice has been deposited with an "overnight" or "same-day" delivery service, properly addressed. This address may be changed from time to time by notice in writing received by the Association. If an Owner fails to provide the Association with an address for purposes of receiving notices, the address of any Lot owned by the Owner may be used in giving the notice.

11.8 Management Agreements Any management agreement entered into by the Association or Declarant may be made with an affiliate of Declarant or a third-party manager and, in any event, shall be terminable by the Association with or without cause and without penalty upon thirty (30) days written notice. The term of any management agreement entered into by the Association or Declarant may not exceed one year and may be renewable only by affirmative agreement of the parties for successive periods of one year or less. Any property

manager for the Association will be deemed to have accepted these limitations, and no contrary provision of any management agreement will be enforceable

11 9 No Partition There shall be no partition of any Lot, nor shall Declarant or any Owner or other person acquiring any interest in any Lot, or any part of the Lot, seek any partition

11 10 Declarant's Right to Use Similar Name The Association irrevocably consents to the use by any other profit or nonprofit corporation that may be formed or incorporated by Declarant of a corporate name that is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of the other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign all letters, documents, or other writings as may be required by the Arizona Corporation Commission (or any other governmental entity) in order for any other corporation formed or incorporated by the Declarant to use a corporate name that is the same or deceptively similar to the name of the Association

11 11 Joint and Several Liability In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by the Declaration and the other Documents shall be joint and several

11 12 Construction In the event of any discrepancies, inconsistencies, or conflicts between the provisions of this Declaration and the Articles, Bylaws, Plat, or Association Rules, the provisions of this Declaration shall prevail in all instances

11 13 Survival of Liability The termination of membership in the Association shall not relieve or release any former Member from any liability or obligation incurred under or in any way connected with the Association during the period of membership or impair any rights or remedies that the Association may have against the former Member arising out of or in any way connected with the membership and the covenants and obligations incident to the membership

11 14 Waiver The waiver of or failure to enforce any breach or violation of the Documents shall not be deemed a waiver or abandonment of any provision of the Documents or a waiver of the right to enforce any subsequent breach or violation of the Documents. The foregoing shall apply regardless of whether any person affected by the Documents (or having the right to enforce the Documents) has or had knowledge of the breach or violation

11 15 Attorney Fees Without limiting the power and authority of the Association to incur and assess attorney fees as part of the creation or enforcement of any assessment, in the event an action is instituted to enforce any of the provisions contained in the Documents, the party prevailing in any action shall be entitled to recover from the other party all reasonable attorneys' fees and court costs. In the event the Association is the prevailing party in the action, the amount of attorney fees and court costs may be deemed all or part of a special assessment against the Lot and Owner involved in the action

11 16 Notice of Proximity to Phoenix Sky Harbor International Airport and City of Scottsdale Airport

Each Owner, by accepting a deed to a Lot, or by otherwise acquiring title to a Lot, acknowledges (for such Owner and the Owner's successors and assigns) that (i) the Project is in close proximity to the City of Scottsdale Airport flight path and is located approximately 3 miles from the City of Scottsdale Airport (the "Airport"), which is currently located generally between Frank Lloyd Wright Boulevard on the north, Pima Road on the east, Thunderbird Road on the south, and Scottsdale Road on the west and, as of the date hereof, the Airport is operated as a general aviation reliever/commercial service airport for Scottsdale and North Phoenix, used generally for single engine and twin engine airplanes, corporate jets, helicopters and scheduled service turbo prop and jet aircraft, (ii) the Project may lie within existing or future flight patterns of Phoenix Sky Harbor International Airport ("Sky Harbor"), which is a large hub commercial service airport serving Maricopa County and is the largest airport in the State of Arizona and, as of the date hereof, the aircraft fleet mix includes single-engine, twin-engine, corporate jets, helicopters and scheduled service utilizing turbo prop, jet planes and all other commercial aircraft, including the

Boeing 747, along with various military fixed and rotary aircraft utilize the field, including the Arizona Air National Guard, who is located on the field and utilizes KC 135 aircraft, (iii) aircraft taking off from and landing at the Airport and Sky Harbor may fly over the Project and adjacent properties at altitudes which will vary with meteorological conditions, aircraft type, aircraft performance, pilot proficiency and governmental restrictions and requirements, (iv) Sky Harbor and the Airport are open twenty-four (24) hours each day, so takeoffs and landings may occur at any hour of the day or night, (v) flights over the Project or adjacent properties by aircraft taking off from or landing at the Airport and Sky Harbor may generate noise, the volume, pitch, amount and frequency of occurrence of which will vary depending on a number of factors, including, without limitation, the altitudes at which the aircraft fly, wind direction and other meteorological conditions and aircraft number and type, and may be affected by future changes in Airport and Sky Harbor use and activity, and (vi) such Owner (for such Owner, the Owner's successors and assigns) hereby accepts and assumes any and all risks, burdens and inconvenience caused by or associated with the Airport and Sky Harbor and their operations (including, without limitation, noise caused by or associated with aircraft flying over the Project and adjacent properties), and agrees not to assert or make and claim against the Declarant, the Association, the Board of Directors and any director, officer, employee, agent, representative or contractor of any of them in regard to the Airport and Sky Harbor operations

ARTICLE 12

CLAIMS AND DISPUTE RESOLUTION/LEGAL ACTIONS

12 1 Dispute Resolution Agreement All Bound ADR Parties, as identified and defined below, agree to encourage the amicable resolution of claims, grievances, controversies, disagreements, or disputes involving the Project or the Documents in order to avoid or limit wherever possible the emotional and financial costs of litigation. Accordingly, each Bound ADR Party covenants and agrees that all Covered Claims, as defined below, between one or more Bound ADR Party must be resolved using the alternative dispute resolution procedures set forth below in this Declaration and the Bylaws in lieu of filing a lawsuit or initiating administrative proceedings. As used in the Documents, the term "Bound ADR Parties" means the Association, Board, Declarant, any affiliate of Declarant, any property manager or association manager for the Project, all Owners, any tenant of an Owner, any family member residing in the Owner's Lot, and any person not subject to this Declaration who voluntarily agrees to be subject to the dispute resolution procedures described below. Unless they otherwise agree, Mortgagees and institutional guarantors are not Bound ADR Parties. As used in the Documents, the term "Covered Claims" means all claims, grievances, controversies, disagreements, or disputes that arise in whole or part out of (i) the interpretation, application, or enforcement of the Declaration or the other Documents, (ii) any alleged violation of the Documents by any of the Bound ADR Parties, (iii) the authority of the Association or the Board to take or not take any action under the Documents, (iv) the failure of the Declarant or the Association or the Board to properly conduct elections, give adequate notice of meetings, properly conduct meetings, allow inspection of books and records, or establish adequate warranty and reserve funds, (v) the performance or non-performance by any of the Bound ADR Parties of any of their respective obligations or responsibilities under the Documents to or on behalf of any other Bound ADR Party, (vi) any and all matters related in any manner to the design or construction of any of the Lots within the Project (other than matters of aesthetic judgment by the Architectural Committee or the Board, all of which are not subject to further review under the alternative dispute resolution procedures or separate legal action), or (vii) any alleged violation or defect with respect to the maintenance or construction of the Common Area or any improvements or landscaping on the Common Area. The term "Covered Claims", however, specifically does not include any Exempt Claims of the type described below. The term "Alleged Defects" means only those Covered Claims described in subsections (vi) and (vii) above.

12 2 Exempt Claims The following claims, grievances, controversies, disagreements, and disputes (each an "Exempt Claim" and, collectively, the "Exempt Claims") are exempt from the alternative dispute resolution provisions described in this Declaration:

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

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

- (i) Title to any Lot or Common Area,
- (ii) A challenge to a property taxation or condemnation proceeding,
- (iii) The eviction of a tenant from a Lot,
- (iv) The breach of fiduciary duty by any one or more of the Board of Directors or officers of the Association,
- (v) The rights of any Mortgagee,
- (vi) An employment matter between the Association and any employee of the Association, or
- (vii) The invalidation of any provision of the Declaration or any of the covenants and restrictions contained in the Documents

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

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

(e) Separate Written Contracts Any action arising out of any separate written contract between Owners, between the Declarant and any Owner, or between Declarant and that would constitute a cause of action under the laws of the State of Arizona regardless of the existence of the Documents, and

(f) Not Bound Parties Any suit in which less than all parties are Bound ADR Parties (unless the parties that are not Bound ADR Parties voluntarily agree to be subject to the alternative dispute resolution procedures established in this Declaration and the Bylaws)

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

12.3 Mandatory Resolution Procedures All Covered Claims must be resolved solely by using the following procedures:

(a) Notice Any Bound ADR Party having a Covered Claim (each a "Claimant") against any one or more Bound ADR Party (each a "Respondent") must notify each Respondent in writing of the Covered Claim (the "Covered Claim Notice"), stating plainly and concisely

- (i) The nature of the claim, including date, time, location, persons involved, and Respondent's role in the Covered Claim,

(ii) The basis of the Covered Claim (i.e., the provisions of the Documents or other authority out of which the Covered Claim arises),

(iii) The resolution or relief sought by Claimant against Respondent, and

(iv) The agreement of Claimant to meet personally with Respondent at a mutually agreeable time and place to discuss ways to resolve the Covered Claim

If the Respondent to the Covered Claim includes the Declarant or its officers, directors, incorporators, members, contractors, subcontractors, or employees, Declarant will be given a period of fifteen (15) days after receipt of the Covered Claim Notice to enter the Lot or Building as the case may be and inspect, test, and, perhaps, repair the alleged violation or defect in the sole discretion of Declarant. This right to inspect and test is irrevocable and may not be waived or otherwise terminated except by a written instrument signed by Declarant.

(b) Conciliation and Negotiation

(i) Each Claimant and Respondent (collectively, the "Claim Parties" and, singularly, a "Claim Party") must make reasonable efforts to meet personally and agree to confer for the purpose of resolving the Covered Claim by good faith and confidential negotiations.

(ii) Upon receipt of a written request from any of the Claim Parties, accompanied by a copy of the Covered Claim Notice, the Board may appoint a representative to assist the Claim Parties in resolving the dispute by negotiation if, in its discretion, the Board believes its efforts will be beneficial to the Claim Parties or to the welfare of the Project.

(c) Mediation

(i) If the Claim Parties do not resolve the Covered Claim through negotiation within ten (10) days of the date of the Covered Claim Notice (or within any other period as may be agreed upon by the Claim Parties) ("Termination of Negotiations"), Claimant will have thirty (30) additional days within which to submit the Covered Claim to mediation by an independent mediation service designated by the Association or, in absence of a mediation service designated by the Association or in the case of a reasonable objection by Claimant, any dispute resolution center or other independent agency providing similar services in the Maricopa County, Arizona area upon which the Claim Parties may mutually agree.

(ii) If Claimant does not submit on a timely basis the Covered Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant will be deemed to have waived the Covered Claim, and Respondent will be released and discharged from any and all liability to Claimant arising out of the Covered Claim, however, Claimant's failure to submit the Covered Claim for mediation will not release or discharge Respondent from any liability to any person that is not a Claim Party to the foregoing proceedings.

(iii) Within ten (10) days of the selection of the mediator, each of the Claim Parties will submit to the mediator and each other a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator will have the right to schedule a pre-mediation conference, and all Claim Parties must attend unless otherwise agreed. The mediation will commence within ten (10) days following submittal of the memoranda to the mediator and will conclude within fifteen (15) days from the commencement of the mediation unless the Claim Parties mutually agree to extend the mediation period. The mediation will be held in Maricopa County or any other place that is mutually acceptable to the Claim Parties.

(iv) The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Covered Claim. The mediator is authorized to conduct joint and separate meetings with the Claim Parties and to make

oral and written recommendations for settlement. Whenever necessary, the mediator also may obtain expert advice concerning technical aspects of the dispute, so long as the Claim Parties agree to obtain and assume the expenses of obtaining the expert advice. The mediator does not have the authority to impose a settlement.

(v) The expenses of witnesses will be paid by the Claim Party producing the witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, will be borne equally by the Claim Parties unless agreed to otherwise. Each Claim Party will bear their attorney fees and costs in connection with the mediation.

(vi) If the Claim Parties do not settle the Covered Claim within thirty (30) days after submission of the matter to the mediation process or within any period of time as determined reasonable or appropriate by the mediator and the Claim Parties, the mediator will issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice must set forth when and where the Claim Parties met, the nature of the Claim Parties' impasse, and the date that the mediation was terminated. At the option of the Claim Parties, the Termination of Mediation notice may establish, as to matters or items that have been agreed to by the Claim Parties, any undisputed factual findings or agreed resolutions.

(vii) Within five (5) days of the mediator's issuance of the Termination of Mediation, each of the Claim Parties must make a written offer of settlement in an effort to resolve the Covered Claim, the Claimant will make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent will make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Covered Claim Notice will constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent will be deemed to have made a "zero", "take nothing", or "do nothing" Settlement Offer.

(viii) All mediation discussions are privileged and confidential in the same manner as described in A.R.S. § 12-2238. Witnesses, Natural Persons who are not Claim Parties (or one (1) authorized representative of a Claim Party that is not a natural person), the Claim Parties Attorneys or one (1) authorized representative of the Claim Parties are the only persons allowed to attend the mediation conference without the consent of all Claim Parties.

(d) Final and Binding Arbitration If the Claim Parties do not agree in writing to accept either the Settlement Demand or the Settlement Offer or otherwise fail to resolve the Covered Claim within fifteen (15) days of the Termination of Mediation, the Claimant will have thirty (30) additional days to submit the Covered Claim to arbitration in accordance with the Arbitration Rules described in the Bylaws. If the Claimant fails to submit on a timely basis the Covered Claim to arbitration, the Covered Claim will be deemed waived, and Respondent will be released and discharged from any and all liability to Claimant arising out of the Covered Claim, however, Claimant's failure to submit the Covered Claim for arbitration will not release or discharge Respondent from any liability to any person that is not a Claim Party to the foregoing proceedings. Except as provided below, an arbitration award issued by the arbitrator (the "Arbitration Award") will be final, binding, and non-appealable, and a judgment may be entered upon the Arbitration Award in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Arizona.

(e) Limited Right of Appeal An Arbitration Award may be (i) vacated by a court (or a court may decline to confirm an award and enter judgment on the award) only in those cases described in A.R.S. § 12-1512 A 1 through A 4, or (ii) modified or corrected by a court only in those cases described in A.R.S. § 12-1513 A.

(f) Limitation on Arbitration Award An arbitrator of a Covered Claim will have no power to grant any relief that cannot be granted by a court, and any monetary award made by the arbitrator will be for actual and compensatory damages only and not exemplary, punitive, or consequential damages

12.4 Allocation of Costs of Resolving Claims

(a) Costs for Negotiation and Mediation Each Claim Party will bear its own costs incurred prior to and during the negotiation and mediation proceedings described in subsections 7.11(a), (b), and (c) above, including the fees of its attorney or other representative. Each Claim Party will share equally all costs of the mediator and, if and to the extent required, will pay this respective share of the costs in advance of the mediation as a condition to their continuation of the prosecution or defense of the Covered Claim.

(b) Costs for Arbitration Each Claim Party will bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation and will share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided below. If, and to the extent required, each Claim Party will pay their respective share of the costs in advance of the arbitration as a condition to their continuation of the prosecution or defense of the Covered Claim.

(c) Association Advance If any Owner that is a Claim Party refuses to pay in advance the cost of mediation or arbitration in any Covered Claim involving the Association, the Association may advance the cost and the amount so advanced will be deemed to be an assessment against the applicable Owner and the Owner's Lot.

(d) Award of Costs If the arbitration panel enters any Arbitration Award that is equal to or more favorable to Claimant than Claimant's Settlement Demand, Claimant's Post Mediation Costs will be added to the Arbitration Award, and all Post Mediation Costs will be borne equally by all Respondents. If the arbitration panel enters any Arbitration Award that is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant, Respondent's Post Mediation Costs will be subtracted from the Arbitration Award, and all Post Mediation Costs will be borne by all the Claimants. The arbitration panel will be the sole judge as to whether or not the Arbitration Award is more or less favorable than the Settlement Demand or Settlement Offer, as applicable.

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

12.6 Alleged Defects If any Owner or the Association desires or intends to bring a claim of any sort against the Declarant or its affiliates or contractors for an Alleged Defect, the following provisions will apply to provide full and fair notice of the existence of the Alleged Defect and an opportunity to repair or correct the Alleged Defect without costly and time-consuming litigation.

(a) Notice of Alleged Defect If any Owner or the Association discovers an Alleged Defect, the discovering party (referred to as a "Defect Claimant") will give written notice to the Declarant of the Alleged Defect and, if known, the repair or remedy sought by the Defect Claimant.

(b) Right to Enter Within a reasonable time after the receipt by Declarant of written notice of the Alleged Defect (or Declarant's independent discovery of a possible Alleged Defect), Declarant will

have the right to enter the affected Lot, Building or Common Area to inspect, test, and, if deemed necessary or advisable by the Declarant in its sole discretion, cause the repair or correction of the Alleged Defect. All tests, inspections, and applicable repairs may be made by Declarant or its agents or independent contractors (including contractors and subcontractors) but can be commenced only after reasonable written notice by the Declarant to the Defect Claimant and must be made only during normal business hours.

(c) Declarant Discretion In performing the tests, inspections, or repairs, as applicable, Declarant will be entitled to utilize methods or take actions that it deems appropriate or necessary, and Declarant's sole obligation with respect to the Defect Claimant will be to restore the affected area as close as reasonably possible to its condition prior to the testings, investigations, or repairs.

(d) No Extension of Warranties The existence of this right to notice and an opportunity to inspect and/or cure will not be deemed to impose any obligation on the Declarant to test, inspect, or repair any Alleged Defect or to establish or extend any applicable warranty of any builder, developer, or seller (including Declarant) that may be applicable to the Lot or Common Area. Notwithstanding Section 12.8 below, the provisions of this Section 12.6 may not be modified, amended, waived, or terminated in any manner until the expiration of each of the following periods of time: (i) any period of time that Declarant or its affiliates or contractors may remain liable or responsible for the Alleged Defect or any resulting injury or damage from the Alleged Defect, without the prior and express written consent of Declarant given in a recorded instrument, (ii) twenty (20) years from the sale of the first Lot to an Owner other than Declarant.

12.7 Amendments to Article XII The alternative dispute resolution procedures established in Article XII of this Declaration may not be modified, amended, terminated, or waived in any manner without Declarant's prior and express written consent, as evidenced by a recorded instrument, for so long as Declarant owns at least one Lot within the Project. After Declarant ceases to own at least one Lot within the Project, the alternative dispute resolution procedures of Article XII may be modified, amended, or terminated in accordance with the procedures established in the Documents, however, to the extent any Covered Claim still involves the Declarant, the Declarant can elect for the Covered Claim to be governed by the alternative dispute resolution procedures previously contained in the Documents (as though not modified, amended, or terminated). Nothing contained in this Section 12.7 is intended to shorten, modify, or amend the provisions of Section 12.6 with respect to the notice and opportunity to inspect and/or cure an Alleged Defect.

12.8 Conflicts Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article and any other provisions of the Documents, this Article shall control.

ARTICLE 13 RIGHTS AND DUTIES OF FIRST MORTGAGEE

13.1 First Mortgagee Protections Notwithstanding any other provisions of this Declaration or any other Documents, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Lot:

(a) The First Mortgagee shall not be personally liable for the payment of any assessment or charge or for the observance or performance of any covenants and restrictions, except as provided in this Declaration, and

(b) At the time any First Mortgagee becomes the record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration and the Documents, including, but not limited to, the obligation to pay for all assessments and charges accruing after the First Mortgagee becomes an Owner, in the same manner as any Owner.

13.2 Mortgagee Notices Upon furnishing the Association with a written request stating the name and address of the Eligible Mortgage Holder and stating the address of the Lot upon which the First Mortgage is held, Eligible Mortgage Holder shall be entitled to the following notices:

(a) Written notification from the Association of any default in the performance by the individual Owner (and borrower on the applicable First Mortgage) of any obligation under the Documents which has remained uncured for a period of sixty (60) days, and

(b) Written notification from the Association of any proposed action which will require the consent of a specified number of Eligible Mortgage Holders as set forth in this Declaration

13 3 Approval Required to Terminate Association Notwithstanding any other provisions of this Declaration, any termination of the legal status of the Association for reasons other than the total condemnation of all the Lots shall not be effective unless approved by two-thirds (2/3) or more of the Eligible Mortgage Holders

13 4 Limitation on Partition and Subdivision No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot

13 5 Conflicting Provisions Except as set forth in the following sentence, in the event of any conflict or inconsistency between the provisions of this Article 13 and any other provision of the Documents, the provisions of this Article 13 shall prevail. In the event of any conflict or inconsistency between the different sub-sections of this Article 13 or between the provisions of this Article 13 and any other provision of the Documents with respect to the number or percentage of Owners, First Mortgagees, or Eligible Mortgage Holders that must consent to an amendment of the Declaration, Articles, or Bylaws, or a termination of the Association, or certain actions of the Association as specified in this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, or Eligible Mortgage Holders shall prevail

ARTICLE 14 TERMINATION

14 1 Termination of Association Except in the case of taking of all the Lots by eminent domain, this Association may be terminated only by the adoption of a termination agreement approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of ninety percent (90%) or more of the total number of eligible votes in the Association. An agreement to terminate shall be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed, by the requisite number of Lot Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. The termination agreement and all ratifications shall be recorded in the official records of the County Recorder in Maricopa County, Arizona and shall be effective only upon recordation. Prior to any vote for a termination of the Association the City must have agreed in writing to accept the obligation to maintain all the Common Areas as the City has made it an obligation on the Association to maintain the Common Areas

14 2 Tenancy in Common If the real estate constituting the Common Area is not to be assumed by the City and the City otherwise consents, then following termination, title to all the real estate in the Common Area vests in the Lot Owners as tenants in common pro rata to their respective interests as provided in this Article 14. While the tenancy in common exists, each Lot Owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the Common Area

14 3 Foreclosure Except as provided in this subparagraph, foreclosure or enforcement of a lien or encumbrance against a Lot does not withdraw that Lot from the Association

Dated as of October __, 2005

"Declarant"

Sydney Sweetwater, L L C , an Arizona limited liability company

By

Its Managing Member

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of October, 2005, by _____, the _____ of Sydney Sweetwater L L C , an Arizona limited liability company, being authorized so to do for the purposes therein contained

Notary Public

My Commission Expires

EXHIBIT "A"

TO

**DECLARATION OF CONDOMINIUM AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SWEETWATER TRAILS**

(Legal Description of Property)

When recorded, mail to

David Narne
Odyssey Homes
8130 East Cactus Road
Suite 500
Scottsdale, 85260

**DECLARATION OF CONDOMINIUM AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SWEETWATER TRAILS**

**DECLARATION OF CONDOMINIUM AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SWEETWATER TRAILS,**

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EXHIBIT "A" Meets and Bound Legal Description of Entire Property