207 Waiver

Title

Legal Description / Ads

Policy or Appeals

Correspondence Between Legal & Staff

Letter of Authorization

WHEN RECORDED, MAIL TO:

R. Colby Larson, Esq.
Gibson Knecht PC
7250 North 16th Street, Suite 412
Phoenix, Arizona 85020

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

ESTATES AT HAYDEN

SCOTTSDALE, ARIZONA

10-PP-2019
10/10/2019

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
ESTATES AT HAYDEN
SCOTTSDALE, ARIZONA

THIS DECLARATION is made as of this __ day of _____, 2019, by MCDOWELL CITRUS 100, LLC, an Arizona limited liability company (the "**Declarant**"). Declarant is the owner of certain real property situated in Maricopa County, Arizona legally described as follows:

> Lots 1 through 5, inclusive, and Tract A according to the Final Plat for **Estates at Hayden** thereof recorded in Book _____ of Maps, page __ of the Official Records of Maricopa County, Arizona Recorder (the "**Project**", as defined in Article 1 below).

Declarant hereby declares that the Project and all Lots and Common Area therein shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, easements, covenants, conditions and restrictions, all of which are and shall be interpreted to be for the purpose of enhancing and protecting the value and attractiveness of the Project and all Lots therein. All of the limitations, covenants, conditions and restrictions shall constitute covenants which shall run with the land and shall be binding upon Declarant, its successors and assigns and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE 1
DEFINITIONS

"**Affiliate**" of a Person shall mean a Person that controls, is controlled by, or is under common control with such other Person.

"**Assessment**" shall mean the Annual, Special and/or Lot Specific Assessments levied and assessed against each Lot and which is to be paid by each Lot Owner as determined by the Association and as provided herein. "**Annual Assessments**", "**Special Assessments**", "**Lot Specific Assessments**" and "**Assessment Lien**" are defined in Section 4.1.

"**Association**" shall mean **ESTATES AT HAYDEN COMMUNITY ASSOCIATION**, an Arizona nonprofit corporation. The Association shall be established by the filing of its Articles of Incorporation (the "**Articles**") and governed by its Bylaws (the "**Bylaws**").

"**Association Rules**" shall mean the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 3.7 of this Declaration, as the same may be amended from time to time.

"**Board**" or "**Board of Directors**" shall mean the governing body of the Association.

"**City**" shall mean the City of Scottsdale, Arizona.

"**Committee**" shall mean the Architectural Control Committee for the Project established pursuant to Article 7 of this Declaration.

"**Common Area**" shall mean: (i) Tract A as shown on the Plat, and (ii) any other tracts designated by Declarant in writing as Common Area pursuant to this Declaration, including all Improvements and facilities thereon and all rights, easements and appurtenances relating thereto, that the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot that the Association may acquire through foreclosure or the Assessment Lien or any deed in lieu of foreclosure. Title to the Common Areas shall be conveyed to the Association by Declarant, free and clear of all monetary liens, but subject to all easements of record affecting the Common Areas. Every Owner shall have a right and easement of ingress and egress and enjoyment in, over and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the right of the Association to suspend Common Area use rights (except for the Roadways) as provided in the Bylaws and the right of the Association to grant easements over Common Area to any public agency, authority or utility company as provided in the Articles. Any Owner may delegate, in accordance with the Project Documents, his right of enjoyment to the Common Area and facilities thereon to members of his family, tenants and contract purchasers who reside on his Lot.

"**Construction Guidelines**" shall mean the guidelines, restrictions, limitations, rules and regulations adopted by the Committee for purposes of development, construction and/or alteration upon a Lot pursuant to Section 7.6 of this Declaration, if any.

"**Declarant**" shall mean, individually and collectively, as the context requires, the above recited Declarant (including any Affiliate of any such Declarant) and/or any Person or Persons to whom all or a portion of the rights reserved to a Declarant under this Declaration are assigned pursuant to a written, recorded document expressly assigning such rights pursuant to the terms and conditions of Section 8.4.

"**Design Guidelines**" shall mean the design guidelines, restrictions, limitations, rules and regulations adopted by the Committee pursuant to Section 7.1 of this Declaration, if any.

"**Dwelling Completion**" shall be the date the primary Dwelling Unit on any Lot receives approval for occupancy by passage of a final inspection from the City.

"**Dwelling Unit**" shall mean any building or portion of a building situated on a Lot and designated for independent ownership and intended for Single Family Residential Use.

"**Exterior Alteration**" shall mean any construction, installation, addition, alteration, repair, change, change of color, change of landscaping, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon.

"**First Mortgage**" shall mean any mortgage (which includes a recorded deed of trust and a recorded contract of sale as well as a recorded mortgage) which is a first priority lien on any Lot.

"**First Mortgagee**" shall mean the holder of a First Mortgage.

"**Homebuilder**" shall mean any homebuilder which acquires any one or more Lots for the purpose of construction of a Dwelling Unit thereon. No Homebuilder shall be a Declarant or may exercise any of Declarant's rights until the provisions of Section 8.4 below are satisfied.

"**Improvement**" shall mean any building, Dwelling Unit, fence, wall or other structure; or any solar collectors or equipment, antennas (including TV antennas), satellite dishes, above ground or underground TV, cell phone or communications apparatuses, broadcasting or receiving towers or equipment; or any swimming pool, tennis court, sport court, road, driveway or parking area; or any trees, plants, shrubs, grass, other landscaping, grading, earthwork, and drainage improvements of every type and kind.

"**Lessee**" shall mean a third party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein "a third party" is a Person who is not an Owner.

"**Lot**" shall mean one of the separately designated Lots in the Project as shown on the Plat, together with any improvements thereon. Each numbered and lettered parcel in the Project is a separate freehold estate.

"**Lot Improvements**" shall have the meaning set forth in Section 5.22.

"**Maintenance Standard**" shall mean the standard of maintenance of Improvements established from time to time by the Board or designated committee or, in the absence of any standard established by the Board or designated committee, the standard of maintenance of Improvements generally prevailing throughout the Project.

"**Member**" shall mean those persons entitled to Membership in the Association as provided herein.

"**Owner**" shall mean the record holder of title to a Lot in the Project. This shall include any person having fee simple title to any Lot in the Project, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. Further, if a Lot or other property is sold under a recorded contract of sale or subdivision trust to a purchaser, the purchaser, rather than the fee owner, shall be considered the "**Owner**" as long as he or a successor in interest remains the contract purchaser or purchasing beneficiary under the recorded contract or subdivision trust.

"**Party Walls**" shall have the meaning set forth in Section 6.4A.

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

"**Plat**" shall mean that certain final plat for "Estates at Hayden" recorded in Book _____ of Maps, page __ of the Official Records of the Maricopa County, Arizona Recorder, together with any other subdivision plat(s) of all or any portion of the Project, as the same are amended from time to time.

"**Project**" shall mean only that certain real property shown on the Plat.

"Project Documents" shall mean and include this Declaration, as it may be amended from time to time, the exhibits, if any, attached hereto, the Plat, the Articles and Bylaws, and any Association Rules, Design Guidelines and Construction Guidelines adopted from time to time by the Association as provided herein or in the Bylaws.

"**Roadways**" shall mean Tract A of the Plat, together with any other roadway tracts within Common Area designated by Declarant in writing pursuant to this Declaration, and the road improvements constructed thereon.

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

"**Single Family Residential Use**" shall mean the occupation or use of a Dwelling Unit by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

"**[2019 dollars]**" shall mean the amount as proportionately increased for each year as follows. The base for computing the adjustment is the Consumer Price Index-Urban Wage Earners and Clerical Workers, United States City Average for All Items (1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics ("**Index**"). If the Index published for September in the year in question ("**Adjustment Index**") has increased from the Index for September of the prior year (the "**Beginning Index**"), the amount in question shall be set by multiplying the amount specified herein (as previously increased under this provision, for prior years) by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. If the Index is discontinued or revised, the Board shall adopt a substitute index or procedure which reasonably reflects the changes in consumer prices. [2019 dollars] will never decrease from the prior year.

"**Visible From Neighboring Property**" shall mean with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE 2
ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS OF THE ASSOCIATION

2.1 Basic Duties of the Association. The management of the Common Area shall be vested in the Association in accordance with this Declaration and the Articles and Bylaws. The Owners covenant and agree that the administration of the Project shall be in accordance with the provisions of the Project Documents, subject to the standards set forth in all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project. In addition to the duties and powers enumerated in the Bylaws and the Articles, and without limiting the generality thereof, the Association shall have the duties and powers as set forth in Article 3 below and elsewhere in this Declaration.

2.2 Membership. The Owner of a Lot shall automatically, upon becoming the owner of same, be a Member of the Association and shall remain a Member thereof until such time as

its ownership ceases for any reason, at which time its Membership in the Association shall automatically cease. Lessees shall not have any voting or Membership rights in the Association by virtue of their occupancy of any Lot or Dwelling Unit thereon.

2.3 Transfer of Membership. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then automatically to the new Owner as provided in Section 2.2. Any attempt to make a prohibited transfer is void. Upon the transfer of an ownership interest in a Lot, the Association shall record the transfer upon its books, causing an automatic transfer of Membership as provided in Section 2.2.

2.4 Membership Classes. The Association shall have two (2) classes of voting Membership established according to the following provisions:

A. Class A Membership shall be that held by each Owner of a Lot other than Declarant (while two classes of Membership exist), and each Class A Member shall be entitled to one (1) vote for each Lot owned. If a Lot is owned by more than one (1) person, each such person shall be a Member of the Association but there shall be no more than one (1) vote for each Lot.

B. Class B Membership shall be that held by Declarant (including any successor or co-Declarant as provided in Section 8.4 below) which shall be entitled to five (5) votes for each Lot owned by Declarant, provided that Class B Membership shall be converted to Class A Membership and shall forever cease when Declarant has conveyed all of the Lots in the Project to Owners other than Declarant. In the event Declarant elects to partially assign or convey its Declarant rights reserved hereunder as provided more fully in Section 8.4, the voting rights of all Lots owned by Declarant and the assignee as co-Declarant, and/or their successors and assigns, shall be added together solely for purposes of determining the conversion of Class B Membership to Class A Membership. Notwithstanding the foregoing, Declarant and any co-Declarant may voluntarily convert all or any portion of their respective Class B Membership to Class A Membership with the prior consent of the other Declarant(s) at any time by giving written notice to the Association.

2.5 Association Voting Requirements. Any action by the Association which, pursuant to an express requirement of the Project Documents or applicable law, must have the approval of the Association Membership before being undertaken shall require: (i) the vote of fifty-one percent (51%) of the voting power of Members present and voting (including absentee ballots) at a duly called and held vote by mail for that vote or meeting of the Membership or fifty-one percent (51%) of the voting power of Members voting through a duly called and held vote by mail (or by facsimile or email, provided that the Association has been provided with a facsimile number or email address for that vote); or (ii) the written assent of fifty-one percent (51%) of the voting power of the entire Membership unless, in either case, another percentage is specifically prescribed by a provision within this Declaration, the Bylaws or the Articles. Unless the Project Documents specifically require otherwise, when directors are to be elected or any other matter is submitted to a vote of the members, such vote may be conducted by mail (or by facsimile or email, provided that the Association has been provided with a facsimile number or email address for that vote) as provided in the Bylaws or as determined by the Board.

2.6 Vesting of Voting Rights. Voting rights attributable to all Lots owned by Declarant shall vest immediately by virtue of Declarant's ownership thereof. Except for Declarant, no Owner of any Lot shall have any voting rights attributable to that Lot until an Assessment has been levied against that Lot and Owner by the Association pursuant to Article 4 below.

2.7 Meetings of the Association. Regular and special meetings of Members of the Association shall be held with the frequency, at the time and place and in accordance with the provisions of the Bylaws.

2.8 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws. Until Declarant has conveyed all Lots to other Persons, Declarant shall have the right to appoint and remove all Directors.

ARTICLE 3
DUTIES AND POWERS OF THE ASSOCIATION

3.1 Maintenance. The Association shall maintain, paint, repair, replace, restore, operate and keep in good condition all of the (i) Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon, and (ii) those applicable rights-of-way and all facilities, improvements and landscaping thereon, which are located adjacent to the Project and for which the City requires to be maintained pursuant to the terms of the Plat or another document, but only until such time that the City has accepted responsibility for the maintenance, repair and replacement of such areas. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or the Owner's Lessees, or their respective guests or other invitees. The repair or replacement of any portion of the Common Area or any Lot resulting from such excluded items shall be the responsibility of each Owner. At its option, the Association may exercise its rights under Section 3.9 and assess the responsible Owner for all costs as a Lot Specific Assessment, and/or the Association shall be entitled to commence an action at law or in equity to enforce this responsibility and duty and/or recover damages for the breach thereof.

3.2 Insurance.

A. Common Area Property Insurance. The Association shall obtain and continue in effect property insurance on the insurable improvements within the Common Area. The policy is to be issued on a "Special Form" policy or its equivalent in an amount determined by the Board of Directors; provided, however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land and other items normally excluded from a hazard and multi-peril property insurance policy. The policy may provide for a reasonable deductible which shall be the responsibility of the Association.

B. Public Liability Insurance. The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant, the

agents and employees of each and the Owners against any liability incident to the ownership or use of the Common Area, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners, other insureds or the Association. Such insurance shall be in amounts deemed appropriate by the Board but in no event shall the limits of liability for such coverage be less than $1,000,000 [in 2019 Dollars] for each occurrence and $2,000,000 [in 2019 Dollars] general aggregate, each reasonably rounded by the Board to the nearest commonly available increment of such insurance reasonably available with respect to bodily injury and property damage. The policy shall provide for no more than $5,000 in self-insured retention of the Association. In the event insurance proceeds are inadequate therefor, then the Association may levy a Special Assessment on Lot Owners therefor as provided in Article 4. The Association's use of funds from its general account or levy of a Special Assessment shall not constitute a waiver of the Association's or any Owner's right to institute any legal proceeding or suit against the person or persons responsible, purposely or negligently, for the damage.

C. Directors' and Officers' Liability Insurance. The Association shall obtain and continue in effect directors' and officers' liability insurance covering all the past, present and future directors and officers of the Association, and covering the Association's obligation to indemnify the directors and officers in the Bylaws, in such limits as the Board of Directors may determine from time to time. The directors' and officers' policy shall have a limit of no less than $1,000,000.00 per claim and $2,000,000.00 aggregate per year [in 2019 Dollars], reasonably rounded by the Board to the nearest commonly available increment of such insurance reasonably available. Policies shall be written on a claims made basis.

D. Fidelity Bonds. The Association shall obtain and continue in effect (and/or cause a professional manager employed by the Association to obtain and continually maintain) bonds covering all persons or entities which handle funds of the Association, including without limitation, any such professional manager employed by the Association and any of such professional manager's employees, in amounts not less than the maximum funds that will at any time be in the possession of the Association or any professional manager employed by the Association but in no event less than the total of Assessments for a four (4) month period on all Lots and all reserve funds maintained by the Association. With the exception of a fidelity bond obtained by a professional manager covering such professional manager's employees, all fidelity bonds shall name the Association as an obligee. In addition, all such bonds shall provide that the same shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and a replacement bond shall be obtained during that thirty (30) day period.

E. Other Insurance. The Association shall also obtain and continue in effect any insurance which may be required by law, including, without limitation, workmen's compensation insurance. The Association shall have the power and authority to obtain and maintain other and additional insurance coverage as determined by the Board.

F. Insurance Requirements. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (a) that there shall be no subrogation with respect to the Association, its agents, servants, and employees,

or with respect to Owners, Lessees and residents and other members of their household; (b) no act or omission by any Owner will void the policy or be a condition to recovery on the policy; (c) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their Mortgagees; (d) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; and (e) a statement of the name of the insured as the Association. All policies shall be in form and amount as determined by the Board but, in any event, shall always satisfy Federal Housing Administration, Department of Veterans Affairs, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other agency requirements in effect from time to time if any such agency holds, insures or guarantees any First Mortgage and the Association has notice thereof.

G. Declarant and Association Not Responsible for Adequacy of Insurance. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant nor the Association, or their respective members, managers, officers, directors, employees and agents, shall be liable to any Owner or any other Person if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of the 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.

H. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article may not be canceled, not renewed or substantially modified until fifteen (15) days after notice of the proposed action has been mailed to the Association and to each Owner and Mortgagee to whom certificates of insurance have been issued.

I. Repair and Replacement of Damage or Destroyed Property. Any Common Area improvements damaged or destroyed shall be repaired or replaced promptly by the Association unless: (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (ii) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild or restore them. The cost of repair or replacement in excess of insurance proceeds or condemnation awards and reserves shall be paid by the Association and, as provided above, the Association may specially assess the Owners therefor. Any excess or remaining insurance or condemnation proceeds which are not needed to restore the Common Area as provided above shall be added to the Association's reserves.

3.3 Enforcement, Remedies, Fines and Penalties and Suspension of Rights. The Association shall enforce the provisions of this Declaration and the other Project Documents by appropriate means, including without limitation the expenditure of funds of the Association, the employment of legal counsel and the commencement of legal actions.

The Association may adopt a schedule of reasonable monetary fines and penalties for violation by Owners (and others for whom Owners are responsible as provided herein) of the provisions of the Project Documents. The amount of the fine or penalty for each violation shall be established by the Board in accordance with a published schedule.

In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, if an Owner or Lessee, and/or the family members, guests, contractors or agents thereof, is(are) in breach of the Project Documents, subject to applicable law, the Board may levy reasonable fines or penalties against such Person(s) and the Owner and/or may suspend Common Area use rights (except for the Roadways) of such Person(s) and/or the Association voting rights of the Owner until the default is fully cured, or a lesser period as determined by the Board, in accordance with Section 3.4. The Association shall have the additional rights and remedies set forth in Section 8.1, and in Article 4 with respect to delinquent Assessments.

3.4 Notice of Violation, Appeal and Payment of Fines and Penalties.

(a) The Board, or any Person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents by the Owner or Lessee, or others for whom they are responsible under Section 3.3. A Notice of Violation shall contain: (i) a description of the violation and the provision(s) of the Project Documents which was (were) violated; (ii) the time and place at which the violation was observed and the first and last name of the Person who observed the violation; (iii) the amount of the fine or penalty to be paid by the Owner or Lessee for such violation, if any, and/or the period for suspension of voting rights and/or Common Area use rights (except for the Roadways), if any; (iv) the name of the Person issuing the Notice of Violation; and (v) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

(b) A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the Notice was addressed on the earlier of the date the Notice is actually received or three (3) days after the Notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Dwelling Unit occupied by the Lessee. If a Lot is owned by more than one Person, a Notice of Violation to one of the joint Owners shall constitute Notice to all of the joint Owners.

(c) The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) business days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

(d) Any fines or penalty levied pursuant hereto shall be handled as a Lot Specific Assessment pursuant to this Section.

(e) The foregoing procedure is subject to any statutory requirements, hearing processes or appeal processes, if any exist from time to time.

(f) The Association does not have to comply with this section in connection with nonpayment of Assessments, collection thereof or use of remedies therefore under Article 4.

3.5 Easements. The Association may grant and reserve easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.

3.6 Management and Other Contracts. The Association shall have the authority to employ a manager or other Persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, subject to the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project. Any agreement for professional management of the Project or any agreement providing for services by Declarant (or any affiliate of Declarant) shall provide for termination by either party without cause or payment of a termination fee upon ninety (90) days' or less written notice or for cause upon thirty (30) days' or less written notice and without payment of a termination fee. Such agreement shall further provide for a reasonable contract term of from one (1) to three (3) years and be renewable only by consent of the Association and the other party.

In addition to the foregoing provisions regarding Association management contracts and contracts with Declarant and its affiliates, Declarant shall not, and shall not have the authority or power to, bind the Association prior to termination of Class B Membership, either directly or indirectly, to contracts or leases unless the Association is provided with a right of termination of any such contract or lease, without cause, which is exercisable without penalty or the payment of a termination fee at any time after the first Board of Directors elected after Class B Membership expires takes office upon not more than ninety (90) days' notice. The foregoing shall not apply to or limit the Declarant's right to enter into (or the terms of) contracts or leases with providers of cable TV, satellite or other communications or utilities services for the benefit of the Project provided that such entities are not affiliates of the Declarant.

3.7 Association Rules. The Association may adopt reasonable Association Rules not inconsistent with this Declaration, the Articles or the Bylaws relating to the use of the Common Area and all facilities thereon and the conduct of Owners and their Lessees, and their respective family members, guests and invitees with respect to the Project and other Owners. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area; provided, however, that the Association Rules may not discriminate among Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles or Bylaws.

A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be available to each Owner. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and all other Persons having any interest in, or making any use of, the Project, whether or not actually

received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association for each Owner to review upon request, and copies will be provided upon payment of the reasonable copying charge therefor established by the Association. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration or the Articles or Bylaws the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws to the extent of any such conflict.

3.8 Association's Entry Right in Emergency. The Association or any Person authorized by the Association may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable, and the Association shall repair any damage caused thereby, except to the extent covered by insurance carried by the Owner.

3.9 Improper Maintenance of any Lots; Other Breaches. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents (including, without limitation, under Section 3.1 above), the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within the specified time period, the Board may cause such action to be taken at said Owner's cost. If at the expiration of the specified period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject as a Lot Specific Assessment.

3.10 Entry Gates; Mail Boxes. The Association shall charge an Owner, as a Lot Specific Assessment, for the cost to replace or repair any equipment provided to the Owner or the Owner's tenant, or any of their respective family members, to obtain access through any electronic gate in the Project or to use any mail box located in the Common Area.

ARTICLE 4
ASSESSMENTS

4.1 Assessment Obligations. Each Owner of any Lot, by acceptance of a deed or recorded contract of sale or beneficial interest in a subdivision trust therefor, whether or not it shall be so expressed in such document is deemed to covenant and agree to pay to the Association: (a) regular "**Annual Assessments**"; (b) "**Special Assessments**" for capital improvements and unexpected expenses; and (c) other charges made or levied by the Association against the Lot and the Owner thereof including, without limitation, the charges described in Section 4.7, interest, late charges, collection costs, costs and reasonable attorneys' fees incurred by the Association in enforcing compliance with this Declaration or any other Project Documents (whether or not a lawsuit or other legal action is instituted or commenced) (collectively, the "**Lot Specific Assessments**"). Such Assessments shall be established and

collected as provided herein and in the Bylaws. Any part of any Assessment not paid within fifteen (15) days after the due date therefor as established in this Article 4 shall bear interest at a rate determined by the Board not exceeding twelve percent (12%) per annum from the due date until paid and shall be subject to a late charge of the greater of $15.00 or ten percent (10%) of the unpaid Assessment or such greater amount specified in an Association Rule and as is permitted by applicable law. The Annual, Special and Lot Specific Assessments made against a Lot and the Owner thereof pursuant to this Declaration or the Bylaws shall be a charge and a continuing lien upon the Lot (hereinafter "**Assessment Lien**"), subject to any applicable statutory limitations or exclusions. Each such Assessment shall also be the personal obligation of the person who was the Owner of such Lot at the time the Assessment fell due as provided in this Article 4 or elsewhere in this Declaration, but thus personal liability shall not pass to successor Owners unless specifically assumed by them. The Assessment Lien on each Lot shall be prior and superior to all other liens except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any First Mortgage on that Lot. No Owner of a Lot may exempt himself from liability for Assessments by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Lot.

4.2 Purpose of Assessments; Budgets. The Assessments by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project, for the improvement and maintenance of the Common Area as provided herein and for the common good of the Project and to enable the Association to discharge and perform its responsibilities.

A. At least sixty (60) days (or soon thereafter as feasible) before the beginning of the first full fiscal year of the Association after the first Lot is conveyed to an Owner and each fiscal year thereafter, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Association expenses including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Area; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Project; (iii) the amount required to render to the Owners all services required to be rendered by the Association under the Project Documents; and (iv) such amounts as are necessary to provide general operating reserves and reserves for contingencies and replacements.

B. Within thirty (30) days after the adoption of a budget, the Board of Directors shall send to each Owner a summary of the budget and a statement of the amount of the Annual Assessment assessed against the Owner's Lot in accordance with Sections 4.3 and 4.6 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Annual Assessments as provided in Sections 4.3 and 4.6 of this Declaration and each Owner shall continue to pay the Annual Assessment against his Lot as established for the previous fiscal year until notice of the Annual Assessment for the new fiscal year has been established by the Board of Directors.

C. The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Owners shall be required.

D. Periodically, but not less frequently than every five (5) years, the Board shall cause to be prepared by a qualified, independent consultant or similar person (who shall not be related to or affiliated with the Association, any member of the Board, any officer of the Association, the Association's independent property manager, if any, or the Declarant) a detailed study of the Association's reserves. Each reserve study shall include recommendations regarding amounts reasonably anticipated to be necessary for the items covered by the Association's reserves and changes in contributions therefor in Association budgets for subsequent fiscal years.

The Board, with the assistance of its independent property manager and such other qualified independent consultants or similar persons as the Board deems appropriate, shall make and annually update Association cash flow projections covering a reasonable period of years from the date of the projection or update. Cash flow projections shall take into consideration cash on hand in the Association's reserves, reasonably anticipated contributions pursuant to Section 4.9 of this Declaration, expected contributions to the reserves from each fiscal year's budget, and any other reasonably anticipated sources of funds for the reserves (including, without limitation, reasonably anticipated proceeds of insurance on capital assets).

Based on such reserve studies and cash flow projections, the Board shall determine and include in each budget a reserve amount as part of the Annual Assessments.

4.3 Annual Assessments. The Board shall annually determine and fix the amount of the Annual (calendar year) Assessment against each Lot, excluding those owned by Declarant while there is a Class B Membership. The Annual Assessment shall be prorated based on the number of months remaining before December 31 of such year as well as any partial months remaining.

Notwithstanding anything to the contrary stated herein, until Class B Membership is terminated pursuant to Section 2.4B above, Declarant (or any co-Declarant under Section 8.4) shall not be obligated to pay Annual Assessments for Lots owned by Declarant pursuant to this section, but while there is Class B Membership Declarant shall pay to the Association the difference between the cost of operating and administering the Association and the Common Area and the Annual Assessments levied under this section against other Owners, but not exceeding (on an annual basis) the amount Declarant would have been required to pay in Annual Assessments but for this sentence. Declarant shall pay Annual Assessments in the same manner and at the same per Lot amount as other Owners under this Declaration after the expiration of the Class B Membership. In the event of any conflict in this Section 4.3 and any other paragraph of the Declaration, this Section 4.3 shall control.

4.4 Special Assessments. In addition to the Annual Assessments authorized above, the Board may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of: (i) any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or other improvements the Association is responsible for maintaining (including fixtures and personal property related thereto); (ii) any unanticipated or

underestimated expense normally covered by a regular Assessment; and (iii) where necessary, for taxes assessed against the Common Area, provided however, that in all events, no such Special Assessment shall be made without the affirmative vote of Declarant (while Class B Membership exists) and of two-thirds (2/3) of the voting power of Class A Members voting in person or by absentee ballot or by proxy (if permitted by applicable law) at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of adopting a Special Assessment shall be sent to all Owners not less than thirty (30) days not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members in person or by absentee ballot or by proxy (if permitted by applicable law) entitled to cast sixty percent (60%) of all of the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. While Class B Membership exists, the quorum requirements described above shall apply to both classes and a quorum shall not exist for a meeting unless a quorum of each class is present.

4.5 Allocation of Assessments. The Owners of each Lot shall bear an equal share of each Annual and Special Assessment except as otherwise specified in Section 4.3 above or elsewhere in this Declaration.

4.6 Commencement of Assessments. The Annual Assessments provided for herein shall commence as to each Lot in the Project on the first day of the month following the close of escrow of the sale of the first Lot in the Project by Declarant or a co-Declarant to another Person, except as provided in Section 4.3. Due dates of Assessments shall be established by the Board and notice shall be given to each Lot Owner at least thirty (30) days prior to any due date; provided, however that Owners shall continue to pay Annual Assessments at the last established rate under Section 4.2B until the Board gives notification of any change in accordance with this Section 4.6. At the option of the Board, all Annual Assessments shall be payable in twelve (12) equal monthly installments or four (4) equal quarterly installments and if Annual Assessments are to be due on a monthly basis, no notice of such Annual Assessments shall be required other than an annual notice setting forth the amount of the monthly Assessment and the day of each month on which each Annual Assessment is due. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment period. Nevertheless, successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

4.7 Lot Specific Assessments. Lot Specific Assessments shall be levied by the Board against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Project Documents that the Owner has refused to cure or remedy, including the failure to keep a Lot clean and free of excessive weed growth and keeping the Improvements thereon in good repair, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that

all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments. A Lot Specific Assessment may also be levied by the Board in its sole discretion against those Lots benefiting from an Association expense where such expense benefits fewer than all of the Owners. Further, Lot Specific Assessments shall include charges levied against a Lot under Sections 3.9 and 3.10 of this Declaration.

4.8 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or that the Association is not enforcing the Project Documents.

4.9 Working Capital Fund Contribution; Reserve Contribution. Except as provided below, upon the closing of any sale or other transfer or conveyance of a Lot, the purchaser shall pay to the Association an amount equal to one-third (1/3) of the Annual Assessment then in effect for the Lot for use as a working capital fund to meet unforeseen expenditures, to purchase any additional equipment or services by or for the Association, or to pay Association expenses such as insurance as they come due in the ordinary course in the event there are not sufficient funds in the Association's accounts (including reserve accounts) at the time of the due date to pay such expenses. The working capital fund may be used for such purposes during the period of Declarant control under Section 2.4 and during the period when the second paragraph of Section 4.3 is in effect. The Board may, from time to time, increase or decrease the amount of the working capital contribution set forth in this paragraph (not to exceed one-third (1/3) of the Annual Assessment then in effect for the Lot) and, during the period of Declarant control under Section 2.4, must obtain the consent of the Declarant.

Except as provided below, upon the closing of any sale or other transfer or conveyance of a Lot, the purchaser shall pay to the Association an amount equal to one-third (1/3) of the Annual Assessment then in effect for the Lot as a contribution to the reserve funds of the Association established under Section 4.2 above. The reserve fund contributions under this section may be used for the purposes of such reserves during the period of Declarant control under Section 2.4 and during the period when the second paragraph of Section 4.3 is in effect. The Board may, from time to time, increase or decrease the amount of the working capital contribution set forth in this paragraph (not to exceed one-third (1/3) of the Annual Assessment then in effect for the Lot) and, during the period of Declarant control under Section 2.4, must obtain the consent of the Declarant.

Amounts paid to the Association pursuant to this Section 4.9 shall be nonrefundable, shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration, and are in addition to any other fees payable pursuant to the Project Documents and any other fees payable at the closing of any sale or other transfer of conveyance of the Lot.

No contributions under this section shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the

grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transferor conveyance was to avoid payment of the contribution required under this section in which event a contribution under this section shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

4.10 Loans by Declarant. In the event the funds available to the Association, including Annual Assessments, Special Assessments, Lot Specific Assessments and Working Capital Fund Contributions under Section 4.9, are insufficient to pay the Association's cash expenses and other cash requirements, Declarant may (but shall have no obligation to), in its sole discretion, make loans to the Association to be repaid pursuant to promissory notes executed by the Association. Outstanding loan amounts shall bear interest at the rate announced by a financial institution having offices located in Arizona selected by Declarant as its "prime rate" plus two percent (2%).

4.11 Purposes for which Association's Funds may be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project and the Owners. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and residents, maintenance of landscaping on Common Areas and public rights-of-way and drainage areas within the Project, recreation, insurance, communications, education, transportation, health, utilities, public services, safety, indemnification of officers and directors of the Association and any other purposes permitted by applicable statutes or the Project Documents.

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

4.13 Effect of Transfer of Lot by Sale or Foreclosure. The sale or transfer of any Lot shall not affect the Assessment Lien or liability of the former Owner for Assessments due and payable except as provided below. No sale or transfer of a Lot shall relieve the new Lot Owner from liability for any Assessments thereafter becoming due or release his Lot from the Lien therefor.

If the First Mortgagee or another person obtains title to a Lot as a result of the foreclosure, trustee's sale or deed in lieu thereof of any First Mortgage, such First Mortgagee or other person shall not be liable for the Assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by the First Mortgagee or other person, and the Assessment Lien therefor shall be extinguished. Such unpaid Assessments shall be deemed to be common expenses collectible from the Owners of all of the Lots through Annual or Special Assessments (including the Owner of the foreclosed Lot), subject to the continuing liability of the transferring or foreclosed Owner.

In a voluntary conveyance of a Lot, the grantee of the same shall not be personally liable for Assessments due to the Association in connection with that Lot which accrued prior to the conveyance unless liability therefor is specifically assumed by the grantee, but the Lot shall remain encumbered by the Assessment Lien therefor.

Any grantee, mortgagee or other lienholder shall be entitled to a statement from the Association setting forth the amount of the unpaid Assessments due the Association for a reasonable preparation charge under Section 4.18. The grantee or other person entitled to receive the statement shall not be liable for, nor shall the Lot conveyed be subject to, a Lien for any unpaid Assessments in excess of the amount set forth in the statement, provided however, the grantee shall be liable for any such Assessment becoming due after the date of any such statement.

4.14 Remedies for Nonpayment. When any Assessment due from an Owner to the Association on behalf of any Lot is not paid within thirty (30) days after the due date, the Assessment Lien therefor may be enforced by foreclosure of the Lien and/or sale of the Lot by the Association, its attorney or other person authorized by this Declaration or by law to make the sale, subject to any restrictions imposed by applicable statutes from time to time. The Assessment Lien may be foreclosed and the Lot sold in the same manner as a realty mortgage and property mortgaged thereunder, or the Lien may be enforced or foreclosed in any other manner permitted by 1aw for the enforcement or foreclosure of liens against real property or the sale of property subject to such a lien. Any such enforcement, foreclosure or sale action may be taken without regard to the value of such Lot, the solvency of the Owner thereof or the relative size of the Owner's default.

Upon the sale of a Lot pursuant to this section, the purchaser thereof shall be entitled to a deed to the Lot and to immediate possession thereof, and said purchaser may apply to a court of competent jurisdiction for a writ of restitution or other relief for the purpose of acquiring such possession, subject to applicable laws. The proceeds of any such sale shall be applied as provided by applicable law but, in the absence of any such law, shall be applied first to discharge costs thereof, including but not limited to court costs, other litigation costs, costs and attorneys' fees incurred by the Association, all other expenses of the proceedings, interest, late charges, unpaid Assessments due to the Association, and the balance thereof shall be paid to the Owner. It shall be a condition of any such sale, and any judgments or orders shall so provide, that the purchaser shall take the interest in the Lot sold subject to this Declaration. The Association, acting on behalf of the Lot Owners, shall have the power to bid for the Lot at any sale and to acquire and hold, lease, mortgage or convey the same.

In the event the Owner against whom the original Assessment was made is the purchaser or redemptioner, the Assessment Lien securing that portion of the Assessment remaining unpaid following the sale shall continue in effect and said Lien may be enforced by the Association or by the Board for the Association as provided herein. Further, notwithstanding any foreclosure of the Assessment Lien or sale of the Lot, any Assessments due after application of any sale proceeds as provided above shall continue to exist as personal obligations of the defaulting Owner of the Lot to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a Member of the Association.

4.15 Suspension of Rights. In addition to all other remedies provided for in this Declaration or at law or in equity, the Board may temporarily suspend the Association voting rights and/or the right to use the Common Area (except the Roadways) of a Lot Owner who is in default in the payment of any Assessment or any other amount due to the Association, as provided in the Bylaws, with such suspension to end upon the Owner's full cure of the default.

4.16 Other Remedies. The rights, remedies and powers created and described in Sections 4.14 and 4.15 and elsewhere in the Project Documents are cumulative and may be used or employed by the Association in any order or combination. Without limiting the foregoing sentence, suit to recover a money judgment for unpaid Assessments, to obtain specific performance of obligations imposed hereunder and/or to obtain injunctive relief may be maintained without foreclosing, waiving, releasing or satisfying the Assessment Liens created for Assessments due hereunder.

4.17 Unallocated Taxes/Payment By First Mortgagees. In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the Lots, said taxes shall be included in the Annual Assessments made under the provisions of this Article, and, if necessary, a Special Assessment may be levied equally against all of the Lots in an amount equal to said taxes, as provided in Section 4.4. First Mortgagees may pay taxes or other charges that are in default and that may or have become charges against the Common Area and shall be entitled to immediate reimbursement therefor from the Association.

4.18 Transfer, Refinance and Status Fees. Each Owner of a Lot (except Declarant and Homebuilders) shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board, subject to applicable law. This fee will apply to all resales, except, as determined by the Board, a reduced fee may be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transferor conveyance was to avoid payment of the contribution required under this section in which event a contribution under this section shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq. Any Owner of a Lot who sells or refinances his Lot

and requires a status statement from the Association in connection therewith shall pay to the Association a fee in such amount as is established from time to time by the Board, subject to applicable law. The Association shall comply with all requirements for materials to be provided under A.R.S. § 33-1806, and may provide such materials even if not legally required to do so. The Owner will pay a reasonable fee therefor which complies with applicable law. Fees charged pursuant hereto shall be secured by the Assessment Lien established pursuant to this Article, subject to applicable law. The amounts collected under this section may be used for any purpose determined by the Board.

ARTICLE 5
USE RESTRICTIONS

5.1 Use of Lots as a Single Family Subdivision; Leases; No Partition.

(a) Single Family Subdivision. All Lots within the Project shall be known and described as residential Lots and shall be occupied and used for Single Family Residential Use only. Business and/or trade uses in the Project shall be restricted as provided in Section 5.4.

(b) Leases. No Owner may rent his/her Lot and the single family house and related improvements thereon for transient or hotel purposes or shall enter into any lease for less than the entire Lot. No lease shall be for a rental period of less than six (6) consecutive months. All leases must restrict occupancy to no more than three (3) unrelated individuals or to a single family of related individuals of any size. No lease shall be for less than the entirety of the Lot and the entirety of the Dwelling Unit constructed thereon, but this sentence will not restrict the ability of an Owner or other occupant to employ bona fide live-in domestic help. Subject to the foregoing restrictions, the Owners of Lots shall have the absolute right to lease their respective Lots provided that the lease is in writing and is specifically made subject to the covenants, conditions, restrictions, limitations, and uses contained in this Declaration and the Bylaws and any reasonable Rules and Regulations adopted by the Association. Owner shall deliver to the Association all information that the Association is permitted to request under A.R.S. 33-1806.01 (or any successor provision) prior to the commencement of the term of the lease. The Owner is fully responsible for the conduct and actions of his Lessees, and his Lessees' family members, guests and other invitees.

(c) No Partition, Condominium or Timeshare. No Owner shall bring any action for or cause partition of any Lot, it being agreed that this restriction is necessary in order to preserve the rights of the Owners. Judicial partition by sale of a single Lot owned by two or more persons or entities and the division of the sale proceeds is not prohibited (but partition of title to a single Lot is prohibited). Notwithstanding the foregoing, a vacant Lot may be split between the Owners of the Lots adjacent to such Lot so that each portion of such Lot would be held in common ownership with another Lot adjacent to that portion, subject to any further requirements or restrictions imposed by the City. No condominium use shall be created or permitted within the Project.

No Lot shall be subjected to or included in any timeshare plan, however named, described or denominated. For purposes of this provision, a "timeshare plan" is any arrangement, plan or similar device, whether by membership agreement, sale, lease, deed, license

or right-to-use agreement or by any other means, in which a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year (even if reservations are required and not guaranteed available). "Timeshare plan" includes fractional ownership programs, vacation clubs, private residence clubs and similar offerings, but does not include bona fide leases or rentals of the Lot in accordance with the terms of this Declaration and applicable laws.

5.2 Nature of Improvements. No Improvements shall be moved from other locations onto any Lot, and all Improvements erected on a Lot shall be of new construction. No Improvements of a temporary character and no trailer, shack, garage, barn or other out-building shall be used on any Lot at any time as a residence, either temporarily or permanently. No unsightly Improvements, object or nuisance shall be erected, placed or permitted on any Lot.

5.3 Animals. No livestock, poultry or other animals shall be raised, bred or kept on any Lot except that customary household pets such as dogs, cats and household birds may be kept, but only such number and types shall be allowed which will not create a nuisance or disturb the health, safety, welfare or quiet enjoyment of other Lot Owners. All animals shall be kept under reasonable control at all times and in accordance with applicable laws and any Association Rules, and shall be restrained by fence or leash from roaming in or through the Common Area or other Owners' Lots. All animal wastes must be promptly disposed of in accordance with applicable City or county regulations, and must be immediately removed by the animal's owner from Common Areas or any other Owner's Lot. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether a particular animal constitutes a customary household pet or is a nuisance (because of noise or otherwise), or whether the number and/or type of animals maintained on any portion of the Project is reasonable, and may require the immediate permanent removal of any animal which it determines is violating these provisions. Any decision rendered by the Board shall be final. Owners shall be liable for any and all damage to property and injury to persons and other animals caused by their animals and the animals of their tenants and other occupants.

5.4 Signs; Restrictions on Commercial Uses. No sign of a commercial nature shall be allowed on the Project, including "For Rent" and "For Sale" signs (except as otherwise required by the Arizona Planned Committees Act, A.R.S. § 33-1801 et seq.). The Association may restrict political signs in accordance with applicable law.

No institution or other place for the care or treatment of the sick or disabled, physically or mentally (except as provided by the Arizona Developmental Disabilities Act of 1978 § 36-581 et seq., or other applicable federal or state law) shall be placed or permitted to remain on any of the Lots.

Further, no trade or business of any kind may be conducted in or from any Lot except that an Owner may conduct a business activity within a single-family house located on a Lot so long as the existence or operation of the business activity: (a) is not apparent or detectable by sight, sound, or smell from the exterior of the single-family house; (b) conforms to all zoning requirements for the Project; (c) does not increase the liability or casualty insurance obligation or premium of the Association; and (d) is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use including, without limitation,

excessive or unusual traffic or parking of vehicles in the vicinity of any Lot or the Common Area as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in the previous sentence, shall be construed to have their ordinary and generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves providing 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: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; (c) a license is required therefor.

Notwithstanding any provision contained herein to the contrary, it shall be expressly permissible for Declarant and Homebuilders (with the consent of Declarant) to move, locate and maintain, during the period of construction of Dwelling Units and sale of Lots, on such portions of the Project owned by that party as that party may from time to time select, such facilities as in the sole opinion of that party shall be reasonably required, convenient or incidental to the construction of Dwelling Units and/or sale of Lots, including but not limited to business offices, storage areas, trailers, temporary buildings, construction yards, construction materials and equipment of every kind, signs, models, and sales offices.

5.5 Use of Garages. No garage may be converted to living space without the prior written consent of the Committee except that Declarant or a Homebuilder (with the consent of Declarant) may use a garage area in a model home or models for a sales office. Owners shall keep their garages neat, clean and free from clutter, debris or unsightly objects and shall at all times keep garage doors closed except as reasonably necessary for ingress and egress. Owners and residents shall first park vehicles inside and fully utilize the garage before utilizing the driveway, and shall fully utilize the garage and driveway before utilizing the Roadways, for parking.

5.6 Solar Collectors; Antennas; Satellite Dishes. Solar collectors and related equipment may not be installed on roofs of houses but may be located elsewhere on the Lots not Visible From Neighboring Property with the prior written approval from the Committee pursuant to Article 7 prior to installing the same, subject to applicable laws and legal requirements. The Association, through the Committee, may from time to time adopt guidelines concerning the types of solar collectors and related equipment which may be installed in the Project and acceptable means of installation therefor, subject to applicable laws and legal requirements.

No antenna may be installed on any roof or exceed eight (8) feet in height, and the installation of any antenna shall be subject to Committee approval, which may include screening requirements so that no antenna is Visible From Neighboring Property. One (1) satellite dish, no larger than one (1) meter across, for the reception of television signals is permitted on each individual Lot if the same is not Visible From Neighboring Property, or if partially visible, if the plans for the same are reviewed in advance by the Committee and such proposed installation is determined to be predominantly unobtrusive by the Committee. The Committee shall have the right to require the installation of landscaping or other screening around the satellite dish. The policies, guidelines and regulations adopted by the Committee related to satellite dishes shall fully comply with regulations of the Federal Communications Commission and all other applicable laws and legal requirements. All antennas and satellite dishes shall be as small as practically possible consistent with the intended use.

No security or surveillance cameras or equipment may be installed which provides views, or takes pictures or other images, or receives sounds of or from any other Lot or Dwelling Unit without Committee approval and subject to such requirements as the Committee may impose to protect the privacy of others.

5.7 Storage Sheds; Swings; Slides; Basketball Hoops; Sport Courts; Recreational and Other Equipment and Toys. Attached storage sheds, recreational, maintenance and other equipment, or toys are permitted on any Lot only if the height of such object is less than the height of the fence on or adjoining said Lot and provided such object is not Visible From Neighboring Property, unless approved by the Committee.

All rear yard swings, playground equipment, jungle gyms and slides (including those used in connection with a swimming pool) and permanently mounted or portable rear yard basketball backboards and poles shall be at least five (5) feet from all fences located on or near perimeter Lot lines, subject to any further requirements or restrictions of the City. The foregoing items shall also be subject to the prior approval of the Committee. Basketball backboards and poles are allowed adjacent to driveways, provided such backboards are not house-mounted and are made of a clear material.

All portable basketball backboards, hoops and stands; other recreational equipment; barbecues; tools; maintenance and other equipment; bicycles and skateboards; and all other items of personal property, when not in actual use, shall be fully removed from the front yard area of the Lot and, if placed in the rear yard of the Lot, shall not be Visible From Neighboring Property.

All fireplaces, fire pits or similar items, and all fountains or other water features, which would be Visible From Neighboring Property shall be in accordance with the Design Guidelines and shall require prior approval of the Committee under Article 7.

Sport courts are permitted if designed in accordance with the Design Guidelines and if approval is granted by the Committee. Lighting of sport courts is not permitted.

5.8 Screening Materials. All screening areas, whether fences, hedges or walls, shall be maintained and replaced from time to time on the Lots by the Owners thereof in accordance with the original construction of the improvements by the Declarant, or as approved by the Committee pursuant to Article 7.

5.9 Lot Maintenance Requirement; Nuisances; Storage Areas. Each Owner shall maintain, repair, replace, restore and reconstruct his Lot and the Improvements constructed thereon (including the Dwelling Unit and all landscaping, including any artificial turf) so as to keep the same in a good, neat and safe order, condition and repair, in full compliance with all applicable laws and legal requirements and in full compliance with this Declaration and the original plans therefor prepared by Declarant and/or approved by the Committee under Article 7 below. Without limiting the generality of the foregoing, the Owner shall keep the roof, exterior walls, doors and windows and other improvements Visible from Neighboring Property in good condition by promptly replacing broken roof tiles or windows, periodically repairing stucco cracks and painting, and similar matters. In the event a Dwelling Unit is totally or substantially destroyed, the Dwelling Unit need not be rebuilt but the Owner shall, within three (3) months,

remove all destroyed or damaged improvements and restore the Lot to its condition prior to construction of the Dwelling Unit as approved by the Committee.

No unsightly objects or nuisance shall be erected, placed or permitted on any Lot, nor shall any use, activity or thing be permitted which may endanger the health or unreasonably disturb the Owner or occupant of any Lot. No noxious, illegal or offensive activities shall be conducted on any Lot. Each Lot shall be maintained free of rubbish, trash, garbage or other unsightly items and the same shall be promptly removed from each Lot and not allowed to accumulate thereon. Garbage cans, clotheslines, woodpiles and areas for the storage of equipment and unsightly items shall be kept screened by adequate fencing or other aesthetically pleasing materials acceptable to the Committee so as to not be Visible From Neighboring Property. Garbage cans may be in view only on collection days and thereafter they must be promptly stored out of sight as provided in Section 5.15.

5.10 Vehicles. No commercial vehicles or "**Recreational Vehicles**" (including, without limitation, campers, motor homes, boats, trailers of any kind, mobile homes or similar type vehicles) shall be parked in front of a Lot, in a front driveway or on the Roadways or otherwise on a Lot where it can be seen from any street, except for temporary parking only not exceeding four (4) consecutive hours. Commercial vehicles shall not include (i) sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Committee, or (ii) those public service and public safety emergency vehicles that cannot be prohibited from parking on a street or driveway by applicable law.

No vehicles (including commercial vehicles and Recreational Vehicles) or other mechanical equipment may be dismantled or repaired (except for ordinary maintenance and repair of such vehicles and equipment inside an enclosed garage, and emergency repairs elsewhere for a time period not exceeding forty-eight (48) hours) or allowed to accumulate on any Lot, or in front of any Lot or on any Roadway, or ever parked or used on any Common Area, except as required by the Association for it to perform its duties hereunder. No vehicle which is abandoned or inoperative, or not currently licensed for street use, shall be stored or kept on any Lot or in front of a Lot on any Roadway, in such manner as to be Visible From Neighboring Property, or on any Common Area.

5.11 Lights and Street Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot or any Improvement erected thereon which in any manner will allow light to be directed or reflected on any other Lot or adjacent street, or any part thereof except as approved by the Committee and as may be permitted in accordance with the City's ordinance. Exterior low voltages landscape lighting is encouraged, but as with any such Improvement prior written approval for exterior lighting must be secured from the Committee. Subdivision street lighting shall not be permitted, except as may be required by the City.

5.12 Outside Speakers and Amplifiers. No radio, stereo, television or other speakers or amplifiers shall be installed or operated on any Lot or anywhere in the Project so as to be audible from other Lots or the Common Area.

5.13 Window Cover Materials. Interior curtains, drapes, shutters or blinds may be installed as window covers. No aluminum foil, reflective material, newspaper or other materials not customarily made for use as window covers may be installed or placed upon the inside or outside of any Dwelling Unit or other Improvement. Exterior awnings, canopies, shutters and similar items may not be installed without prior written approval of the Committee as to color, style, design and materials.

5.14 Nuisances. No rubbish, debris or hazardous materials of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or any activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. The Board shall have sole discretion to determine whether a nuisance exists.

5.15 Garbage and Trash. No garbage or trash shall be placed or kept on any Lot, except in covered (except during construction) containers of a type, size and style which are approved by the Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property, except to make the same available for collection and then only for the time reasonably necessary to effect such collection and except during construction. All rubbish, trash and garbage shall be removed from the Lots and Common Area and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot and no garbage, trash or other waste materials shall be burned on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area. During construction on a Lot, the Owner of such Lot shall provide an enclosed rubbish container for the Lot approved by the Committee and shall keep its Lot clean of construction trash at all times. In addition, each Owner shall during such construction be responsible to immediately clean up any trash, rubbish, debris, mud and dirt brought or tracked onto the Project in connection with such construction.

5.16 Disease and Insects. No Person shall permit any thing or condition to exist upon any property within the Project which shall induce, breed or harbor infectious plant diseases or noxious insects.

5.17 Barbecue Pits and Grills, Fire Pits and Outside Fireplaces. Other than barbecue pits or grills, fire pits and outside fireplaces constructed, installed and operated in compliance with the Association Rules, Construction Guidelines, Design Guidelines, and applicable law, no open fire shall be permitted on the Project nor shall any other similar activity or condition be permitted.

5.18 Safe Condition. Without limiting any other provision in this Article, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Area.

5.19 Encroachments. No tree, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other

area from ground level to a height of eight (8) feet, without the prior written approval of the Committee.

5.20 Model Homes. The provisions of this Declaration which may prohibit nonresidential use of Lots and which regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by Declarant or a Homebuilder (with Declarant consent) engaged in the construction or marketing of Dwelling Units within the Project or parking incidental to the visiting of such model homes, so long as the location of such model homes and parking areas, and hours of operation, are approved in advance by the Committee, and the construction, operation and maintenance of such model homes otherwise comply with all of the provision of this Declaration. Any Dwelling Units constructed as model home shall cease to be used as model homes at any time when the Owner (excepting Declarant) thereof is not actively engaged in the construction and sale of residential dwellings within the Project. Except for Declarant or any Affiliate of Declarant, who shall be expressly permitted to use Dwelling Units constructed within the Project as model homes for the sale of homes located outside of the Project, no Dwelling Unit owned by any other Owner shall be used as a model home for the sale of homes located outside of the Project.

5.21 Drilling and Mining. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil or water wells, tanks, tunnels, mineral extractions, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

5.22 Landscaping; Lot Improvements; Weed Control; Landscaping if Dwelling Unit is Removed. Subject to the variance provisions of Section 7.3 below, the landscaping for the front portion of the Lot not installed by Declarant or a Homebuilder in conjunction with the sale of the Lot must be installed and substantially completed in a professional and attractive manner by the Owner within three (3) months from the Owner's acquisition of the Lot from Declarant or Homebuilder, and the landscaping for the rear and side portions of the Lot not installed by Declarant or a Homebuilder in conjunction with the sale of the Lot must be installed and substantially completed in an attractive manner by the Owner within twelve (12) months from the Owner's acquisition of the Lot from Declarant or a Homebuilder. Such landscaping shall be installed based upon landscape plans therefor approved in advance by the Committee pursuant to Article 7 below. The landscape plans submitted to the Committee must include any proposed changes in grade to be accomplished as part of the landscaping development.

All landscaping, at all times, must be maintained by each Owner in a neat and attractive manner and any alterations or modifications made to the original landscaping of a Lot as originally installed shall be approved in advance by the Committee. Further, each Owner must maintain, repair and restore any and all grades, slopes, retaining walls and drainage structures (collectively "**Lot Improvements**") as installed by Declarant or a Homebuilder on a Lot or which has been approved by the Committee.

In the event a Dwelling Unit is totally or substantially destroyed, and the Dwelling Unit is not promptly rebuilt, the Owner shall, within three (3) months, remove all destroyed or damaged Improvements and landscape the Lot as approved by the Committee. Further, if the Dwelling

Unit is torn down or removed and not promptly replaced with a new Dwelling Unit, the Owner will remove all debris and will, within three (3) months, landscape the Lot as approved by the Committee. The Owner will maintain all landscaping on the vacant Lot in accordance with this section.

If any Owner does not: (i) install and complete approved landscaping in the front portion of the Lot within the three (3) month period described above, or install and complete approved landscaping in the rear or side portions of the Lot within the twelve (12) month period described above; (ii) maintain his landscaping in a neat and attractive manner as provided above; (iii) maintain all Lot Improvements on the Lot; (iv) keep the Lot free from weeds, including vacant Lots where no Dwelling Unit is then constructed; or (v) comply with the preceding paragraph relating to landscaping of Lots without Dwelling Units, the Declarant or the Association (by action of the Board) pursuant to Section 3.9, after giving the Owner fifteen (15) days' written notice to cure any such default, shall have the right to cause the necessary landscaping work or Lot Improvement to be done and the Owner in default shall be responsible for the cost thereof, together with interest thereon at the rate of twelve percent (12%) per annum until paid. If the Association does the work, the costs and interest shall be a Lot Specific Assessment. If Declarant does the work, Declarant shall have a lien on the defaulting Owner's Lot for the costs and interest. In addition to the foregoing, any party may utilize remedies available under Section 8.1 for such Owner's default.

The Project is planned as a desert community. The outdoor areas Visible From Neighboring Property and all landscaping and Improvements on Lots, including without limitation, plant materials, crushed stone (e.g., DG), boulders, decorative walls, paving materials, structures and outdoor lighting, shall fit in with a Sonoran desert context subject to review by the Committee and shall be in compliance with the Design Guidelines. In general the plant palette shall be from an approved desert plant list suitable for desert planting for aesthetic look, low water use and survivability.

5.23 No Warranty of Enforceability; Declarant's Exemption. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 5 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any of the restrictive covenants. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

Except as provided in this Section 5.23 and except as otherwise provided by applicable law, Declarant shall be exempt from the effect of the restrictions in this Article 5. Furthermore, except as provided in this Section 5.23, nothing contained in this Declaration shall be construed to prevent or limit the right of a Declarant (and its respective affiliates, agents, employees, contractors and subcontractors) to, in its sole discretion, do any one or more of the following on Lots owned by Declarant and on such portions of the Common Area: (i) construct, install and maintain production homes, model homes (for sales in the Project or for other communities owned by Declarant or any of its Affiliates), sales offices, and parking incidental, thereto, landscaping and signs, in such a manner as Declarant may deem appropriate; (ii) construct,

install or maintain any other Improvements necessary or convenience to the development, marketing, sale and/or lease of such Lots or Common Areas; (iii) conduct any other activity reasonably required and related to the foregoing, including, but not limited to, the storage and staging of construction equipment, trailers and materials; or (iv) the right to allow the gated entrances to remain open during business and construction hours for the period of time necessary to sell all of the Project and construct all of the Improvements within the Project. Declarant may, with respect to portions of the Project originally owned by it, provide some or all of the same exemptions provided in this Section 5.23, to a Homebuilder by recording a copy of such assignment in the Official Records of Maricopa County, Arizona. Notwithstanding anything to the contrary in this Article 5, the rights of any Homebuilder shall be subject to review and approval by Declarant.

5.24 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans of the Project as they exist on the day this Declaration is recorded; (ii) any property subject to this Declaration will be committed to or developed for any use; or (iii) the use of any property subject to this Declaration will not be changed in the future.

5.25 Natural Area Open Space. Each of the Lots is subject to City ordinances relating to the preservation of natural area open spaces and by accepting a deed to a Lot, each Owner agrees to comply with all such ordinances. Each Owner understands that severe fines may be imposed for violation of any natural area open space ordinance and each Owner, by accepting the deed to a Lot, agrees to be solely responsible for any fines imposed by the City as a result of any violation of natural area open space ordinances affecting such Owner's Lot.

5.26 Retaining Walls and Flood Walls. In accordance with the Final Plat, approved engineered improvement plans, and physical improvements on the Lots in the Project, certain Lots are encumbered by retaining walls and/or flood walls. These are engineered improvements for protecting the ground, banks and slopes from erosion and storm water drainage. These improvements are designed by a licensed civil engineer and approved by the City of Scottsdale, and installed by the Declarant in accordance with the approved plans, and are to be maintained by the Lot Owner, and shall not be tampered with, altered, damaged, moved, removed, replaced or otherwise changed without being designed by a licensed civil engineer and approved by the City of Scottsdale.

5.27 Floodplain and Floodway on Lots. There is a natural desert wash that crosses the Project from east to west, a portion of which crosses over the rear portion of certain Lots. A 100-year flood plain and a floodway for this wash is mapped and engineered as part of the engineered improvement plans and submittals to the City of Scottsdale and FEMA with respect to a Conditional Letter of Map Revision (CLOMR) and a Letter of Map Revision (LOMR). The floodplain and floodway shall not be altered, damaged, moved, removed, replaced or otherwise changed without being designed by a licensed civil engineer and approved by the City of Scottsdale, and by FEMA. Any portion of the desert wash area located on a Lot shall be maintained in its natural desert wash condition by the Owner of a Lot.

ARTICLE 6
FENCES, PARTY WALLS AND EASEMENTS

6.1 Fence Height. All walls, including fences separating front and back yards, shall be at least the minimum required by the City for pool safety, and no more than a maximum of eight (8) feet and shall be constructed across the rear and sides of the Lot.

6.2 Fences. The fences for any Dwelling Unit shall be of the same architectural style as the Dwelling Unit and shall be approved by the Committee. All perimeter fences, boundary fences, or garden walls shall be constructed within the Lot and shall be of concrete block construction with a stucco mortar wash finish, constructed and painted according to the standard detail provided by Declarant or otherwise as approved by the Committee. All block fences shall be of 6" or 8" CMU; no 4" block fencing will be allowed. Accent stone may be used if approved by the Committee. Gates may be of wood or wrought iron construction, but are still subject to the written approval requirements. Accent panels or decorative trim may be used with prior written approval and authorization of the Committee.

6.3 Fence Construction and Repair Requirements. All fences shall be maintained in good condition and repair, and fences, upon being started, must be completed within a reasonable time not exceeding three (3) months from commencement of construction. If any fence originally installed by an Owner is wholly or partially damaged by any cause, it shall be removed, in its entirety or returned to its original condition within three (3) months from the date of damage. Any fences originally installed by Declarant or a Homebuilder, or in a location in which a Declarant or Homebuilder-installed fence was originally erected, must be promptly restored to their original condition by such Owner, or the Owner(s) of the adjacent Lots if the same is a Party Wall under Section 6.4.

Wherever the words "Party Wall," "fence," and "wall" or similar words appear in this Declaration, they include block walls, wrought iron fences, wood (or partially wood) fences and other materials used as a fence, fences, wall or walls (except a wall which is part of a house), consistent with the Design Guidelines and Committee approval.

6.4 Fences as Party Walls.

A. Fences which may be constructed by Declarant or a Homebuilder upon the dividing line between Lots or between a Lot and Common Area, or near or adjacent to said dividing line because of minor encroachments due to engineering errors (which are hereby accepted by all Owners and the Association in perpetuity) or because existing easements prevent a fence from being located on the dividing line, are "**Party Walls**" and shall be maintained and repaired at the joint cost and expense of the adjoining Lot Owners, or of the adjoining Lot Owner and the Association if the Party Wall divides a Lot and Common Area. Paint and/or stucco surfaces shall be maintained and repainted as necessary by the party whose property is enclosed by the painted and/or stuccoed surface. Fences constructed upon the back of any Lot (which do not adjoin any other Lot or Common Area) by the Declarant or a Homebuilder shall be maintained and repaired at the cost and expense of the Lot Owner on whose Lot (or immediately adjacent to whose Lot) the fence is installed. Such Party Walls and fences shall not be altered, or changed in design, color, material or construction from the original installation made by the

Declarant or Homebuilder without the approval of the adjoining Owner(s), if any, and the Committee. In the event any Party Wall is damaged or destroyed by the act or acts of one of the adjoining Lot Owners, his family, agents, guests or tenants (or by any employee, agent or contractor of the Association), that Owner or the Association shall be responsible for said damage and shall promptly rebuild and repair the Party Wall(s) to its/their prior condition, at his or its sole cost and expense. In all other events when any Party Wall is wholly or partially damaged or in need of maintenance or repair, each of the adjoining Owners (or the adjoining Owner and the Association, if applicable) shall share equally in the cost of replacing the Party Wall or restoring the same to its original condition. For this purpose, said adjoining Owners (or the adjoining Owner and the Association, if applicable) shall have an easement as more fully described in Section 6.5(A)(ii). All gates shall be no higher than the adjacent Party Wall or fence.

B. In the event of a dispute between Owners with respect to the binding repair or rebuilding of a Party Wall, then, upon written request of one of such Owners addressed to the Committee, the matter shall be submitted to the Committee for arbitration under such rules as may from time to time be adopted by the Committee. If no such rules have been adopted, the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third arbitrator to be chosen within five (5) days by any judge of the Superior Court of Maricopa County. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners who shall share the cost of arbitration equally. In the event one Owner fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other Owner, then said requesting Owner shall have the right and power to choose both arbitrators.

6.5 Easements.

A. General Easements.

(i) Easements for installation and maintenance of utilities and drainage facilities and for other purposes have been created as shown on the Plat, and additional easements may be created by grant or reservation by an Owner for the foregoing purposes. Except as may be installed by Declarant or a Homebuilder, no Improvements shall be placed or permitted to remain within these easements which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, if any, or which may obstruct or retard the flow of water through the channels in the drainage easements, if any, or which may otherwise be inconsistent or incompatible with the easement(s). The easement area of each Lot and all improvements located thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible, and except for any easement area referred to in Section 6.5(A)(iii) below, which will be maintained by the Owner of the Lot who has use of the easement. All Lot Owners and the Association shall comply with all easements in favor of the City or utility companies set forth on the Plat or other recorded documents, and all requirements of the City in connection therewith.

(ii) For the purpose of repairing and maintaining any Party Wall, an easement not to exceed five (5) feet in width is hereby created over the portion of every Lot

immediately adjacent to any Party Wall to allow the adjoining Owner access for maintenance purposes as set forth herein and no other purpose.

(iii) In addition to the foregoing, if a Party Wall is not located between Lots, an easement is hereby created for six (6) months after a Dwelling Unit is constructed on any Lot for the purpose of constructing and maintaining said Party Wall. With respect to any Party Wall not located on a dividing line between Lots but located near or adjacent to such dividing line, an Owner of a Lot shall have and is hereby granted a permanent easement over any property immediately adjoining said Owner's Lot up to the middle line of said Party Wall for the use and enjoyment of the same.

(iv) Each Lot and Common Area tract within the Project is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to minor engineering errors, errors in either the original construction or reconstruction of the buildings on the Lots, or the settlement or shifting of buildings or any other similar cause. There shall be valid easements for the maintenance or said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting, provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

B. Declarant and Homebuilder Easements.

(i) Declarant and a Homebuilder (with the consent of Declarant) shall have the right and an easement to maintain sales, leasing and/or management offices, models and advertising on Lots owned by Declarant or the Homebuilder and to maintain sales, leasing and/or management offices and advertising signs on the Common Area while the Declarant or the Homebuilder sells Lots in the Project.

(ii) Declarant and a Homebuilder (with the consent of Declarant) shall have the right and an easement on and over the Common Area to construct thereon all buildings and improvements consistent with the approved plans therefor and to use the Common Area (until Class B Membership terminates) and any Lots owned by Declarant or the Homebuilder for construction and renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

(iii) The Declarant and a Homebuilder (with the consent of Declarant) shall have an easement on, over and through the Lots (but not through any houses thereon) for any access necessary to complete any renovations, warranty work or modifications to be performed by Declarant or the Homebuilder.

C. Association Easements. Declarant hereby creates the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors over the Lots (but not the houses thereon):

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

(ii) For inspection, maintenance, repair and replacement of the Common Area accessible from the Lots; and

(iii) For the purpose of enabling the Association, the Board, the Committee or any other committee appointed by the Board, to exercise and discharge their respective rights, powers and duties under the Project Documents. No Owner shall do any act or create any obstruction which would unreasonably interfere with the right or ability of the Association to perform any of its obligations or exercise any of its rights under the powers or easements reserved under this Declaration.

ARTICLE 7
ARCHITECTURAL CONTROL

7.1 Creation of Committee; Design Guidelines and Construction Guidelines. For the purpose of maintaining the architectural and aesthetic integrity and consistency within the Project, protecting the health and welfare of residents, protecting the natural environment and preventing nuisances detrimental to other properties within the Project, an Architectural Control Committee (the "**Committee**") consisting of three (3) members is hereby established, except that the Committee need have only one member while Declarant has the right to appoint the Committee as provided below. While Declarant owns any Lot, Declarant, and its successors and assigns to whom rights are specifically assigned in writing under Section 8.4, shall have the sole right to appoint, remove and replace Committee members, who need not be Lot Owners. Declarant may waive its right to appoint some or all Committee members by recording an instrument in the office of the Maricopa County Recorder giving notice of the same.

After Declarant owns no Lots, a new Committee may be appointed by the Board of the Association. If no such Committee is appointed, then and in such event, the members of the Committee appointed by the Declarant, and/or its successors and assigns, may, but are not obligated to, continue to act until such time as the Board appoints a new Committee. Members of the Committee appointed by the Board shall serve for a period of one (1) year or until their successors are duly appointed, whichever is later or until they are removed by action of the Board. Notwithstanding anything to the contrary, the composition of the Committee shall comply with applicable law, including A.R.S. § 33-1817, as it is in effect from time to time.

A majority of the Committee shall be entitled to take action and make decisions for the Committee.

The Committee may adopt and amend Design Guidelines and Construction Guidelines from time to time to guide the design, construction and/or alteration of Improvements and Exterior Alterations. The Committee shall promptly notify all Owners of the adoption or amendment of Design Guidelines and/or Construction Guidelines and provide copies thereof upon request, for which reasonable copying fees may be charged. The Design Guidelines may include, without limitation, provisions regarding: (a) the size of Dwelling Units; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (c) placement of Dwelling Units and other Improvements; (d) landscaping design, content and conformance with the character of the Project and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage;

and (g) perimeter and screen wall design and appearance. The Design Guidelines may contain general provisions which are applicable to all of the Project as well as provisions which vary from one portion of the Project to another depending upon the location, unique characteristics and intended use thereof. Notwithstanding anything to the contrary contained herein, so long as the Declarant has the right to appoint and remove members of the Committee, any adoption, amendment or appeal of the Design Guidelines and Construction Guidelines shall require the prior written consent of Declarant so long as Declarant still owns any Lot.

The Design Guidelines and Construction Guidelines, if any, are in addition to and not in lieu of the land use and zoning ordinances of the City, provided, however, that if any of the provisions of this Declaration, the Design Guidelines or the Construction Guidelines conflict with any land use or zoning ordinances of the City as applicable to the Project, the more restrictive provisions shall control.

7.2 Review by Committee. No Improvements or Exterior Alterations shall be commenced, erected, made, structurally repaired, replaced or altered (except as set forth below) until the plans and specifications showing the nature, kind, shape, size, height, color, material, floor plan, location and approximate cost of same shall have been submitted to and approved by the Committee. The Committee shall have the right to refuse to approve any Improvement or Exterior Alteration which is not suitable or desirable in their opinion for aesthetic or other reasons, including noncompliance with the Design Guidelines, and they shall have the right to take into consideration: (i) the suitability of the proposed Improvement or Exterior Alteration; (ii) the material (including type and color) of which it is to be built; (iii) the site (including location, topography, finished grade elevation) upon which it is proposed to be erected; (iv) the harmony thereof with the surroundings (including color and quality of materials and workmanship); and (v) the effect of the Improvement or Exterior Alteration as planned on the adjacent or neighboring property (including visibility and view). Any Owner requesting approval of the Committee shall also submit to the Committee any additional information, plans and specifications which the Committee may reasonably request. In the event that the Committee fails to approve or disapprove an application for approval within sixty (60) days after its receipt of a fully compliant application, together with all supporting information, fees (as provided below), plans and specifications requested by the Committee, approval will not be required and this section will be deemed to have been complied with by the Owner who has requested approval of such plans, provided the design, location, color and kind of materials in the Improvement or Exterior Alterations shall be governed by all of the restrictions herein set forth.

With respect to reviewing an Owner's plans and specifications, the Committee shall have the right to employ professional consultants to review submittals for Exterior Alterations or Improvements, to assist it in discharging its duties. In the event the Committee elects to employ such consultant, the Committee shall first give notice to the Owner of the fee required for purposes of hiring any such consultant and the Owner shall promptly pay said consultant's fee to the Committee prior to the Committee being obligated to proceed further with its review of said Owner's submission.

The Committee's or any professional consultant's review and/or approval of Improvement or Exterior Alterations shall not be interpreted or deemed to be an endorsement or verification of the safety, structural integrity or compliance with applicable laws or building

ordinances of the Improvement or Exterior Alterations and the Owner and/or its agents shall be solely responsible therefor. Neither the Association, Committee, officers, directors, employees, agents, architects or design professionals shall have any liability whatsoever with respect to any defects or deficiencies associated with any plans submitted for approval. The Association, Board, Committee and its members, and Owners shall have no personal liability for judicial challenges to its decisions and the sole remedy for a successful challenge to a decision of the Committee shall be an order overturning the same without creating a right, claim or remedy for damages.

The approval by the Committee of any Improvement, Exterior Alteration, repair, change or other work pursuant to this section shall not be deemed a waiver of the Committee's right to withhold approval of any Improvement, Exterior Alteration, repair, change or other work subsequently submitted for approval.

The approval required of the Committee pursuant to this section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. Notwithstanding anything to the contrary, the Committee shall comply with A.R.S. § 33-1817, as it is in effect from time to time.

7.3 Variances. The Committee may (with Board approval in its sole discretion and in extenuating circumstances) grant variances from the restrictions set forth in Article 5 and Article 6 of this Declaration and any of the requirements set forth in this Article 7 if the Committee determines that (a) either (i) a restriction would create an unreasonable and substantial hardship or burden on an Owner or (ii) a change of circumstances has rendered a restriction obsolete and (b) the activity permitted under the variance will not have a substantially adverse effect on other Owners and is consistent with the high quality of life intended for the Project.

7.4 Declarant's Exemption; Right to Replat. The restrictions and conditions set forth in this Article 7 shall not be applicable to any original construction whatsoever undertaken by the Declarant or by a Homebuilder (with the consent of Declarant). In addition to the foregoing, Declarant hereby reserves the right, in its sole discretion, and without the consent of the Committee or any other Owner or lienholder (except as provided herein), to amend the Plat with regard to any Lots which Declarant owns from time to time. Notwithstanding the foregoing, such replatting shall not affect the boundaries of any other Owner's Lot or the Common Area and shall always comply with all zoning and other applicable statutes, rules, ordinances and regulations or any governmental or quasi-governmental agency having jurisdiction over the Project. Subject to satisfaction of the foregoing conditions, any amendment to the Plat prepared and recorded by Declarant may reconfigure Declarant's Lots and/or create additional Lots.

7.5 Zoning Compliance. All Improvements, including, without limitation, tennis courts, sport courts and swimming pools, must be constructed on the Lots in compliance with all minimum yard setback requirements established by the applicable City zoning ordinance as it may be amended from time to time.

7.6 Construction Guidelines; Diligent Commencement and Completion of Improvements. In addition to all other restrictions contained herein, the Board or Committee

may adopt such other and further Construction Guidelines as are consistent with this Declaration, which additional Construction Guidelines shall be published and made available to each Owner and which shall be enforced by the Committee.

All Improvements and Exterior Alterations shall be subject to the following restrictions, in addition to all other requirements:

(a) During construction all trash and construction debris shall be placed in a container and shall be removed as required, as provided in Section 5.15.

(b) The front street area shall be kept clean and free of debris by the Owner or contractor and all mud or construction debris left upon the street by the contractor, the Owner, or their agents or employees, shall be removed.

Upon receipt of approval from the Committee for any Improvement, Exterior Alteration, repair, change or other work, the Owner who has requested such approval shall proceed to perform, construct or make the Improvement, Exterior Alteration, repair, change or other work approved by the Committee as soon as practical, and the approval shall lapse if work does not bona fide begin within twelve (12) months. Upon commencement of the work, the Owner shall diligently pursue such work so that it is completed as soon as reasonably practical and within such time as may be prescribed the Committee. If work ceases or substantially ceases for ninety (90) days, and the Board determines that the appearance of the Lot and Improvements is having a material and adverse effect on the Project, the Board, at any time thereafter until work bona fide re-starts, may require the Owner to do such work, remove such Improvements, or install such landscaping as the Board determines will reasonably eliminate the adverse effect of the condition of the Lot and Improvements. If the Owner does not bona fide commence such work within twenty (20) days after notice by the Board of the required work and thereafter diligently complete it, the Board may take action under Section 3.9.

ARTICLE 8
GENERAL

8.1 Effect of Declaration and Remedies. The declarations, limitations, easements, covenants, conditions and restrictions contained herein shall run with the land and shall be binding on all persons purchasing (or whose title is acquired by foreclosure, deed in lieu thereof, trustee's sale or otherwise) or occupying any Lot in the Project after the date on which this Declaration is recorded. In the event of any violation or attempted violation of these covenants, conditions and restrictions, they may be enforced by an action brought by the Association, the Committee or by the Owner or Owners (not in default) of any Lot or Lots in the Project, at law or in equity, in addition to the Association's remedies in Sections 3.3, 3.4, 3.7, 3.9, 4.14, 4.15 and 4.16. Declarant has no duty to take action to remedy any such default. Remedies shall include but not be limited to damages, injunctive relief and/or any and all other rights or remedies pursuant to law or equity and the prevailing party shall be entitled to collect all costs incurred and reasonable attorneys' fees sustained in commencing and/or defending and maintaining such lawsuit. Any breach of these covenants, conditions and restrictions, or any remedy by reason thereof, shall not defeat nor affect the lien of any mortgage or deed of trust made in good faith and for value upon the Lot in question and the breach of any of these

covenants, conditions and restrictions may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any such mortgage or deed of trust.

All instruments of conveyance of any interest in any Lot shall contain (and if not, shall be deemed to contain) a reference to this Declaration and shall be subject to the declarations, limitations, easements, covenants, conditions and restrictions herein as fully as though the terms and conditions of this Declaration were therein set forth in full; provided, however, that the terms and conditions of this Declaration shall be binding upon all persons affected by its terms, whether express reference is made to this Declaration or not in any instrument of conveyance. No private agreement of any adjoining property owners shall modify or abrogate any of these restrictive covenants, conditions and restrictions.

8.2 Plurals; Gender. Whenever the context so requires, the use of the singular shall include and be construed as including the plural and the masculine shall include the feminine and neuter.

8.3 Severability. Invalidity of any one or more of these covenants, conditions and restrictions or any portion thereof by judgment or court order shall in no way affect the validity of any of the other provisions and the same shall remain in full force and effect.

8.4 Transfer by Declarant. Wherever Declarant is granted certain rights and privileges hereunder, Declarant shall have the right to fully or partially assign and transfer any of such rights and privileges as to the Lots which it owns to any other party owning Lots as evidenced by a written instrument recorded in the office of the Maricopa County Recorder which describes in detail the particular Declarant's right or rights being assigned (if less than all such Declarant rights) and said instrument shall state that, in such case, the assignee is a co-Declarant or if Declarant has assigned all its rights in said instrument, it shall state that the assignee is a successor Declarant. If the operation of this Section 8.4 results in there being more than one Declarant at any one time, all such Declarants shall be co-Declarants holding the rights assigned to them by their original assignor. Upon an assignment by Declarant of its rights hereunder, Declarant shall thereafter have no further liability, responsibility or obligations for future acts or responsibilities of the successor or co-Declarant hereunder and the successor or co-Declarant shall be solely responsible therefor (to the extent of the assignment) and all parties shall look to the successor or co-Declarant therefor. At any time, Declarant or a co-Declarant may, by a written, recorded notice, relinquish all or any portion of its rights hereunder and all parties shall be bound thereby, except that no Declarant or co-Declarant, nor its successors or assigns, may relinquish the rights of any other Declarant terminated thereby. Declarant (or a successor) may collaterally assign all of its rights and privileges to act as Declarant for the Project to a lender as additional security for any loan from the lender encumbering all or substantially all of the Lots in the Project owned by such Declarant, with such assignment to become absolute and final in favor of such lender or a purchaser at a foreclosure or trustee's sale upon that party's acquisition of fee title to the encumbered Lots, unless such party otherwise specifies in a recorded instrument.

8.5 Term; Conflicts. This Declaration shall remain and be in full force and effect for an initial term of thirty-five (35) year from the date this Declaration is recorded. Thereafter, this Declaration shall automatically be deemed to have been renewed for successive terms of ten (10) years, unless revoked by an instrument in writing, executed and acknowledged by the then

Owners of not less than seventy-five percent (75%) of the Lots in the Project. If there is any conflict between any of the Project Documents, the provisions of this Declaration shall prevail. Thereafter, priority shall be given to the Project Documents in the following order: the Plat, Articles, Bylaws and Association Rules.

8.6 Amendments. At any time, this Declaration may be amended by an instrument in writing, that has been approved by the Members holding at least sixty-seven percent (67%) of the votes of the Association and with the written consent of Declarant, if Declarant owns any Lot; provided however, that the Declarant, while Class B Membership exists, may amend this Declaration to correct errors or comply with applicable law or the guidelines or regulations of any governmental or quasi-governmental agency insuring, guaranteeing or purchasing loans in the Project, without the consent of or prior notice to any other Owner or lienholder, including First Mortgagees. In addition, the provisions of this Declaration shall not be amended to the detriment of any Declarant without the prior written consent of Declarant even if such Declarant no longer owned any portion of the Project at the time the amendment is adopted. So long as the Declarant is a Member of the Association, any amendment to this Declaration must be approved in writing by the Declarant. The Declarant, so long as the Declarant is a Member of the Association, may amend this Declaration without the consent of any other Owner; provided, however, in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby. So long as Declarant owns at least sixty-seven percent (67%) of the votes in the Association, any amendment to this Declaration shall be signed by Declarant and shall be recorded in the Official Records of Maricopa County, Arizona. At any time Declarant does not own at least sixty-seven percent (67%) of the votes in the Association, any amendment approved pursuant to this Section 8.6 shall be signed by the President or Vice President of the Association and shall be recorded in the Official Records of Maricopa County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to this Section 8.6, shall be signed by the Declarant and recorded in the Official Records of Maricopa County, Arizona. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the recording of the amendment in the Official Records of Maricopa County, Arizona. Any challenge to any amendment to this Declaration for the reason that the amendment was not adopted by the required number of Members or was not adopted in accordance with the procedures set forth in this Section 8.6 must be made within one (1) year after the recording of the amendment in the Official Records of Maricopa County, Arizona.

ARTICLE 9
ADDITIONAL PROVISIONS

9.1 Drainage and Onsite Retention. The Project has been approved by the City subject to certain requirements and restrictions with respect to drainage. Certain parcels within the Project will be required to receive rain water from streets, and rain water from the Project must drain onto the Common Area. All areas defined as retention basins on the approved grading plan for the Project shall remain at the grades indicated on the approved grading plan on file with the City and nothing will be constructed to hinder the flow of storm water from public

streets to these retention basins. The Improvements within the retention areas, including but not limited to landscaping, irrigation systems, storm drains and bleed off, will be maintained by the Association.

The provisions of this section constitute a covenant running with the land of the Project and each Lot within the Project, and upon recording, shall be binding upon any subsequent purchaser or occupier of any part of the Project.

9.2 Declarant's Right to Use Similar Name. The Lot Owners and Association hereby irrevocably consent to the use by any other corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of such 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 such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

9.3 Access Gates; No Liability of Association, Declarant and Homebuilders for Certain Matters.

9.3.1 Access Gates. One or more electronically activated access gates may be installed serving all or portions of Project in order to limit access and provide more privacy for the Owners, Lessees and residents. The access gate(s) shall be part of the Common Area and shall be maintained, repaired and replaced by the Association. Each Owner, Lessee and other occupant acknowledges and agrees that the access gate(s) do not guarantee the safety or security of the Owners, Lessees, occupants, their guests or invitees, or guarantee that no unauthorized person will gain access to the Project. Each Owner, Lessee and occupant, for themselves and on behalf of their families, guests and invitees, acknowledges that the access gate(s) may restrict or delay entry into, or access within, the Project by police, fire department, ambulances and other emergency vehicles or personnel and agree to assume the risk that the access gate(s) will restrict or delay entry into, or access within the Project by police, fire department, ambulances or other emergency vehicles or personnel. Neither Declarant or any Homebuilder(s), nor the Association, nor any director, officer, manager, agent or employee of Declarant or the Association shall be liable to any Owner, Lessee, occupant, or their families, guests or invitees, for any claims or damages resulting, directly or indirectly, from the existence, operation or maintenance of the access gate(s). Each Owner understands that any gate that is in use at the time such Owner becomes an Owner may be abandoned, terminated and/or modified by a majority vote of the Board of Directors. The commencement of the use of any gate shall not be deemed to be an assumption of any duty on the part of the Association, any Homebuilder(s) or Declarant with respect to the Project and neither Declarant or any Homebuilder(s), nor the Association, nor the Board of Directors (nor any committee thereof) makes any representation or warranty concerning the efficacy of the gate(s) relating to security or the ease or entry of fire, police or other emergency personnel. Each Owner, for itself and its Lessees and occupants, by acceptance of a deed to a Lot, whether or not so stated in the deed, shall be deemed to have agreed to take any and all protective and security measures and precautions which such Owner would have taken if the Project had not been gated.

9.3.2 Release. Each Owner, Lessee and resident, on behalf of its family members, invitees and licensees, hereby releases the Association, Declarant and any Homebuilder(s) from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including but not limited to strict liability) arising out of or relating to any nuisance, inconvenience, disturbance, injury to persons or damage to property resulting from activities or occurrences described in this Section 9.3 above.

ARTICLE 10
DISPUTE RESOLUTION PROVISIONS - MANDATORY BINDING ARBITRATION

10.1 Dispute Resolution.

10.1.1 Consensus for Association Action. Except as provided in this Article 10, the Association may not commence a legal proceeding or an action without the approval or affirmative vote of Owners representing not less than seventy-five percent (75%) of the total authorized votes in each class of Membership, which approval must also contain, at a minimum, (i) the approval of an estimated budget for the litigation being approved by the Owners and (ii) the approval of a resolution establishing one or more Special Assessments to fund the litigation being approved by the Owners and such litigation specific Special Assessment shall be the only funds of the Association that may be used by the Association to pay litigation fees and costs, and contingent fee agreements shall not be permitted. A Member holding a proxy (if proxies are then allowed by applicable law, such as A.R.S. § 33-1812, as amended) or otherwise representing Lots owned by Owners other than the voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of seventy-five percent (75%) of the total number of Lots represented by the voting Member. Claims and litigation brought by the Association subject to this Section 10.1.1 must be disclosed by any Owner selling to a prospective purchaser and must be disclosed by the Association if the prospective purchaser requests any information from the Association. Section 10.1 shall not apply, however, to (i) actions brought by the Association to enforce the Project Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or (v) any claims, grievances or disputes that do not involve a Bound Party (as defined below in Section 10.1.2) and where the amount in controversy is equal to or less than $50,000.00. Except for the various matters that are excluded from the scope of "Claims" in Section 10.1.3 below, in no event shall the cost of any legal proceeding(s) commenced by the Association be funded out of any Assessments other than one or more Special Assessments that are expressly for such legal proceedings, and such legal proceedings shall also not be funded from reserves, loans, or contingent fee agreements.

10.1.2 Alternative Method of Resolving Disputes. Declarant, its officers, directors, employees, agents, Affiliates and subsidiaries; the Association, its officers, directors, committee members and other Association officials; all Owners, residents, and other Persons subject to this Declaration; any Homebuilder, its officers, directors, employees, agents, Affiliates and subsidiaries; and any Person not otherwise subject to this Declaration who agrees to submit to this Article 10 after request by a Bound Party, including without limitation any contractors,

subcontractors, suppliers, architects, engineers and any other Person or entity providing materials or services in connection with the construction of any Improvement upon or benefitting the Project (each of the foregoing such entities being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes related to the Project or this Declaration as more particularly described in Section 10.1.3 (collectively, "Claims") to the procedures set forth in this Article 10.

10.1.3 Claims. Unless specifically exempted below, all Claims between any of the Bound Parties relating to the Project regardless of how the same might have arisen or on what it might be based including, but not limited to, Claims: (a) arising out of or relating to the interpretation, application or enforcement of the Project Documents or the rights, obligations and duties of any Bound Party under the Project Documents; (b) relating to the design, development, construction of the Improvements (including, without limitation, construction of the Dwelling Unit), whether or not such Improvements are Visible From Neighboring Property; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of Section 10.1.4 and, if applicable, the dispute resolution provisions of the purchase agreement for the purchase of a Dwelling Unit. To the extent of any conflict between the dispute resolution provisions of this Declaration, and the dispute resolution provisions of a purchase agreement, the dispute resolution provisions of the purchase agreement shall control between the buyer and Declarant (only if such Declarant is a party to the purchase agreement) or Homebuilder, and the buyer and seller, as to the Lot(s) or other portions of the Project subject to the purchase agreement, but the provisions hereunder shall apply as to the Common Areas, actions brought by or on behalf of the Association, and other Claims not covered by the applicable purchase agreement. Notwithstanding the foregoing, in addition to the provisions of Section 10.1.4, Claims involving a Defect or Alleged Defect shall first be subject to the provisions of Section 10.2, prior to the Bound Parties proceeding to negotiations under Section 10.1.4(B)(ii).

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

A. any suit by the Association against any Bound Party to enforce the provisions of Article 4 (Assessments);

B. any suit by the Association or a Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association's and/or the Declarant's ability to act under the provisions of Article 5 (Use Restrictions) or Article 7 (Architectural Control);

C. any suit between or among Owners which does not include a Declarant, a Homebuilder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Project Documents;

D. any suit in which any indispensable party is not a Bound Party;

E. any suit as to which any applicable statute of limitations has expired; and

F. those matters set forth in the second to last sentence of Section 10.1.1.

10.1.4 Mandatory Procedures.

A. **Notice**. Any Bound Party having a Claim (for purposes of this Section 10.1.4, "Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises including, as applicable, proof that the Members have approved the course of action in accordance with Section 10.1.1 above);

(iii) the proposed remedy; and

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

To the extent applicable, the Association shall promptly provide to any Bound Party all Association documents reasonably requested by such Bound Party to confirm that seventy-five percent (75%) of the total authorized votes in each class of Membership has approved the commencement of a legal proceeding or an action, including the filing of a Claim.

B. Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 30 days after the later of (1) the date of the Notice and (2) for Claims involving an Alleged Defect, the Cure Period provided in Section 10.2, then the Claimant may submit the Claim to mediation within 30 days thereafter. If Claimant does not submit the Claim to mediation within such 30-day period, or does not appear for the mediation, then the Respondent shall deliver notice to Claimant, in accordance with Section 10.7, stating that Respondent is ready to proceed with mediation of the Claim. If Claimant, within 60 days after the receipt of Respondent's notice, does not submit the Claim to mediation or does not appear for the meditation, Claimant shall be deemed to have waived the Claim,

and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iii) All mediation proceedings conducted pursuant to this Article 10 shall be administered in accordance with the rules of the AAA, applying the AAA rules, procedures, and protocols determined by the mediator to be most applicable to the nature of the Claim, including, where applicable, the AAA's Supplementary Rules for Residential Construction Disputes, the AAA Consumer Due Process Protocol, and Supplemental Procedures for Consumer-Related Disputes.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 90 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 10.1.4 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 10. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying, from all such Parties pro rata) all costs incurred in enforcing such agreement including, without limitation, attorneys' fees and court costs.

C. Binding Arbitration.

Upon Termination of Mediation, Claimant shall be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the rules of the AAA, applying the AAA rules, procedures, and protocols determined by the arbitrator to be most applicable to the nature of the Claim, including, where applicable, the AAA's Supplementary Rules for Residential Construction Disputes, the AAA Consumer Due Process Protocol, and Supplemental Procedures for Consumer-Related Disputes or, if such supplementary procedures are not in effect, in accordance with the AAA's Construction Industry Arbitration Rules then in effect; provided, however, that the Federal Arbitration Act (9 U.S.C. Section 1, *et seq.*) shall apply, as necessary, to supplement the applicable AAA rules. Such Claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds $250,000.00 the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator, except as provided in the Section 10.1.4(C)(ii). Arbitrators shall have at least five (5) years' experience serving as an arbitrator and shall have

technical expertise and knowledge in the area(s) of dispute, which may include legal expertise if legal issues are involved. The arbitrator(s) shall not have any relationship to the parties or interest in the Project.

(i) Consolidation of claims is not permitted except where otherwise required by law. In any case involving multiple parties or consolidated claims, any party may require that a panel of three (3) arbitrators decide the case, including all preliminary and procedural issues. The Party making the request for additional arbitrators agrees to pay the entire cost associated with the additional arbitrators.

(ii) If Claimant does not submit the Claim to arbitration within 90 days after receipt of the Termination of Mediation, or does not appear for the arbitration, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim, provided nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iii) Except as elsewhere provided herein, each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(iv) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

(v) Unless otherwise mutually agreed by the parties to the proceedings, the arbitration proceedings shall be heard in the County.

(vi) The award of the arbitrator or its decision is final and may be confirmed, entered and enforced as a judgment in a county having jurisdiction, subject to appeal only in the event of the arbitrator's manifest disregard of the law, no evidence to support the award, or such other grounds for appeal of arbitration awards that exist by statute, common law or the applicable rules of the administrative agency.

10.1.5 No Amendment of Section 10.1. Without the prior written consent of Declarant and any and all Homebuilders, this Section 10.1 may not be amended for a period of twenty (20) years from the effective date of this Declaration.

10.2 Right to Cure Alleged Defect. If the Association, the Board or any Owner or other Person (for purposes of this Section 10.2, "Claimant") claims, contends, or alleges that a Defect (an "Alleged Defect") exists in any Improvements, whether or not such Improvements are Visible From Neighboring Property, within the Project as installed or constructed by or on behalf of a Declarant or a Homebuilder, including, but not limited to, the Dwelling Unit constructed on the Lots, the Bound Party alleged to be responsible (for purposes of this Section 10.2, the "Respondent") shall have the right to inspect, repair, redesign, and/or replace the Alleged Defect as set forth in this Section 10.2.

A. Defect Defined. As used in this Declaration, "Defect" shall mean failure to construct or install Improvements, whether or not such Improvements are Visible From Neighboring Property, in accordance with: approved plans and specifications, applicable governmental requirements, contractual obligations, applicable covenants or aesthetic requirements or standards of good practice in the applicable industry; using acceptable materials or procedures; in breach of applicable governmental, legal or contractual obligations; or otherwise contrary to the expectations of the Claimant.

B. Notice of Alleged Defect. As soon as possible after discovery, and in all events within thirty (30) days after discovering any Alleged Defect, a Claimant shall give written notice of the Alleged Defect ("Notice of Alleged Defect") to the Respondent(s) believed by the Claimant to be responsible for the Alleged Defect. The Notice of Alleged Defect shall include a reasonably detailed description of the Alleged Defect, which shall include, at a minimum, information constituting "reasonable detail" as described in A.R.S. § 12-1363(O), the information required by Section 10.1.4(A), and may contain any additional information the Claimant believes to be necessary to cure the Alleged Defect.

C. Right to Enter, Inspect, Repair and/or Replace. Within ninety (90) days after the receipt of a Notice of Alleged Defect (the "Cure Period"), the Respondent shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter the affected portion of the Project for the purposes of inspecting and/or conducting testing and, if the Respondent(s) so chooses in its sole discretion, repairing and/or replacing the Alleged Defect (or paying the Claimant the reasonable cost of repairing and/or replacing the Alleged Defect) or to otherwise respond to the Claimant in the event that the Respondent(s) determines that no default has occurred and/or no Defect exists. A Claimant shall have no right to bring any action against Respondent(s) until the earlier of: (i) the expiration of the Cure Period (as such Cure Period may be reasonably extended by the Respondent if Respondent is diligently pursuing a cure) or (ii) the Respondent(s)' election to not take any curative action with respect to the Alleged Defect (the "Termination of the Cure Period"). Upon the Termination of the Cure Period, the Claimant may elect to proceed to mediation as provided in Section 10.1.4(B)(ii), and thereafter, the remainder of Section 10.1.4. shall govern the resolution of the dispute between Claimant and Respondent. The Cure Period shall be extended by any period of time that Claimant refuses to allow such Respondent(s) to perform inspections and/or perform tests as provided in this

Section 10.2. Any agreement made in writing for repair, replacement or other curative action shall be enforceable against both parties to the agreement without requiring either party to again go through the notice and other procedures provided for in this Article 10.

D. No Additional Obligations; Irrevocability and Waiver of Right. Nothing in Section 10.2 shall be construed to impose any obligation on any Person to inspect, test, repair, or replace any item or Alleged Defect for which the Person is not otherwise obligated under applicable law or other binding legal obligation. The right to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to any Person except by a written document executed by that Person.

E. No Amendment of Section 10.2. Without the express prior consent of Declarant and any and all Homebuilders, Section 10.2 may not be amended for a period of twenty (20) years from the effective date of this Declaration.

10.3 Conflicts. Notwithstanding anything to the contrary in this Declaration, if there is a conflict between the provisions of this Article 10 and any other provision of the Project Documents, this Article 10 shall control.

10.4 Arizona Statute Compliance. In the event a court of competent jurisdiction invalidates all or part of this Article 10 regarding the resolution of Disputes and litigation becomes necessary, Declarant, each Homebuilder, the Association, the Board, and all Owners shall be bound by the applicable Arizona Construction Defect Statute—currently codified at A.R.S. § 33-2001, *et seq.*, and A.R.S. §12-1361, *et seq.*—then in existence.

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

A. normal wear and tear;

B. an Owner's, Member's, Resident's or third party's use of the Project and/or Improvements;

C. alterations by Owners, other than those performed by Declarant or a Homebuilder; or

D. reliance by Declarant or any Homebuilder on engineering or other reports.

10.6 Funds of the Association. Notwithstanding any other provision of this Article 10 (or of any other ARTICLE of this Declaration), no funds of the Association shall be used or devoted to proceedings with respect to any Defect unless they are raised specifically for such purposes by a Special Assessment imposed in accordance with the requirements of this Declaration following appropriate notice to the Members of the purposes for which such funds are being collected.

10.7 Notices under Article 10. All notices required pursuant to this Article 10 to be given to a Person that is an entity shall be deemed sufficient if personally delivered, delivered by commercial messenger service, or mailed by registered or certified mail, postage prepaid, return receipt requested to the address of: (i) the Statutory Agent for a Person (if any) and (ii) the "Domestic Address" as set forth in the records of the Arizona Corporation Commission or other jurisdiction of organization. With respect to notice that is required to be sent to a Person which is not an entity, such notice may be sent to the last known address of such Member, Owner, or resident as it appears on the records of the Association as of the date of mailing.

10.8 Scope. A Declarant or a Homebuilder may, at its sole election, include its contractors, sub-contractors and suppliers, as well as any warranty company and insurer as parties in any mediation or arbitration. The waiver or invalidity of any portion of this Article 10 shall not affect the validity or enforceability of the remaining portions of this Article 10. This Article 10 does not limit the rights of Declarant or a Homebuilder against their respective contractors, sub-contractors and suppliers whether at contract or at law.

10.9 No Amendment of Article 10. Without the express prior consent of Declarant and any and all Homebuilders, Article 10 may not be amended for a period of twenty (20) years from the effective date of this Declaration.

10.10 WAIVERS OF TRIAL BY JURY AND CERTAIN DAMAGES.

NOTICE: BY SIGNING THIS DECLARATION, THE ASSOCIATION WAIVES AND GIVES UP, AND BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY LOT, EACH LOT OWNER (INCLUDING EACH HOMEBUILDER) AND DECLARANT WAIVE AND GIVE UP THEIR RESPECTIVE RIGHTS TO HAVE ANY DISPUTES BETWEEN ANY OF THEM TRIED BEFORE A JURY. THE ASSOCIATION, EACH LOT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE, SPECIAL, INDIRECT AND/OR CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE BETWEEN THEM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY LOT, EACH LOT OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE, SPECIAL, INDIRECT AND/OR CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE. A DISPUTE INCLUDES ANY CLAIM, ALLEGATION OR ASSERTION IN ANY WAY RELATED TO THIS DECLARATION; USE, CONDITION, DESIGN OR CONSTRUCTION OF THE DWELLING UNIT OR ANY OTHER PORTION OF THE PROJECT (INCLUDING, BUT NOT LIMITED TO, CONSTRUCTION DEFECTS, SURVEYS, SOILS CONDITIONS, GRADING, SPECIFICATIONS, OR INSTALLATION OF IMPROVEMENTS), INCLUDING ALL CONSTRUCTION BY DECLARANT AND ALL HOMEBUILDERS; THE ASSOCIATION; ANY LOT OR DWELLING UNIT; THE COMMON AREA; OR ANY ALLEGATIONS OF BREACH OF THE PROJECT DOCUMENTS, NEGLIGENCE, TORTIOUS CONDUCT, BREACH OF CONTRACT OR BREACH OF IMPLIED OR EXPRESS WARRANTIES AS TO THE CONDITION OF THE PROJECT, ANY DWELLING UNIT OR THE COMMON AREA.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

DATED this ____ day of _____, 2019.

MCDOWELL CITRUS 100, LLC, an Arizona limited liability company

By _____
Jeff Blandford
Its Member

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Jeff Blandford, the Member of **MCDOWELL CITRUS 100, LLC**, an Arizona limited liability company, on behalf of said company.

_____
Notary Public

My Commission Expires:

_____

JOINDER IN DECLARATION

ESTATES ON HAYDEN COMMUNITY ASSOCIATION, an Arizona nonprofit corporation, hereby joins in the foregoing Declaration solely to evidence its agreement to perform its duties and obligations under the Declaration, including, without limitation, its duties and obligations under Section 8.7.

DATED this ____ day of _____, 2019.

ESTATES ON HAYDEN COMMUNITY ASSOCIATION

By_____

Its _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of Estates on Hayden Community Association.

_____
Notary Public

My Commission Expires:

_____

First American Title™	ALTA Commitment for Title Insurance
	ISSUED BY **First American Title Insurance Company**
Commitment	File No. 4613TAZ

COMMITMENT FOR TITLE INSURANCE

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, **First American Title Insurance Company**, a Nebraska Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

Countersigned
Thomas Title & Escrow, LLC

By: Frank W Burch
Authorized Signature

First American Title Insurance Company

Dennis J. Gilmore, President

Jeffrey S. Robinson, Secretary

If this jacket was created electronically, it constitutes an original document.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by ** ERROR RETRIEVING DATA **. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

COMMITMENT CONDITIONS

1. DEFINITIONS

(a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.

(b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.

(c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.

(d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.

(e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.

(f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.

(g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.

(h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

(a) the Notice;

(b) the Commitment to Issue Policy;

(c) the Commitment Conditions;

(d) Schedule A;

(e) Schedule B, Part I—Requirements;

(f) Schedule B, Part II—Exceptions; and

(g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

(a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:

(i) comply with the Schedule B, Part I—Requirements;

(ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or

(iii) acquire the Title or create the Mortgage covered by this Commitment.

(b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.

(c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.

(d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.

(e) The Company shall not be liable for the content of the Transaction Identification Data, if any.

(f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.

(g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

(a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.

(b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.

(c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.

(d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.

(e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.

(f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is $2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at http://www.alta.org/arbitration.

Transaction Identification Data for reference only:
Issuing Agent: Thomas Title & Escrow, LLC
Issuing Office: Thomas Title & Escrow
Issuing Office's ALTA Registry ID:
Issuing Office File Number: 4613TAZ
Escrow Officer: Sheila Hunter
Title Officer: Scott Bryner

COMMITMENT FOR TITLE INSURANCE
Issued by
First American Title Insurance Company

SCHEDULE A

1. Commitment Date: **August 22, 2019, 05:00 pm**

2. Policy to be issued:
   (a) 2006 ALTA® Extended Coverage Owner's Policy

   Proposed Insured: **City of Scottsdale, a municipal corporation**

3A. The estate or interest in the land described in this Commitment and covered herein is **Fee Simple** and title thereto is at the effective date hereof vested in:

McDowell Citrus 100, LLC, an Arizona limited liability company

3B. Title to the estate herein described upon issuance of the Policy shall be vested in:

City of Scottsdale, a municipal corporation

4. The land referred to in this Commitment is described as follows:

SEE ATTACHED EXHIBIT "A"

EXHIBIT "A"

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

COMMITMENT FOR TITLE INSURANCE
Issued by
First American Title Insurance Company
SCHEDULE B, PART I
Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

2. Pay the agreed amount for the estate or interest to be insured.

3. Pay the premiums, fees, and charges for the Policy to the Company.

4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

5. All of 2018 taxes are paid in full.

   NOTE: Taxes are assessed in the total amount of $3,061.74 for the year 2018 under Assessor's Parcel No. 216-47-012B.

6. Intentionally Omitted

7. Intentionally Omitted.

8. Intentionally Omitted

9. Intentionally Omitted

10. Intentionally Omitted

11. Intentionally Omitted

12. Furnish a copy of the Articles of Organization, stamped "filed" by the Arizona Corporation Commission; a fully executed copy of the Operating Agreement, and any amendments thereto; and a list of the current members of McDowell Citrus 100, LLC, a(n) Arizona limited liability company. NOTE: Final determination as to which parties must execute all documents on behalf of the company shall be made upon compliance with above.

13. Record _____ Deed from McDowell Citrus 100, LLC, an Arizona limited liability company, to Buyer(s).

NOTE: The Company reserves the right to make further requirements and/or exception based upon its review of the documentation submitted to satisfy the above requirements.

End of Schedule B - Section One

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SCHEDULE B, PART II
Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.

2. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records

3. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession thereof.

4. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the Public Records.

6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

7. Any lien or right to a lien for services, labor or material not shown by the Public Records.

Exceptions above will be eliminated from any A.L.T.A. Extended Coverage Policy, A.L.T.A. Homeowner's Policy, A.L.T.A. Expanded Coverage Residential Loan Policy and any short form versions thereof. However, the same or similar exception may be made in Schedule B of those policies in conformity with Schedule B, Part Two of this Commitment.

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8. Taxes for the full year of 2019. (The first half is due October 1, 2019 and is delinquent November 1, 2019. The second half is due March 1, 2020 and is delinquent May 1, 2020).

9. Intentionally Omitted

10. Intentionally Omitted

11. An easement for road and incidental purposes recorded in Docket 1830, Page 153 and thereafter resolution vacating and abandoning a portion of the road, but reserving a public utility easement as set forth in Resolution recorded as 94-0332120, of Official Records.

12. An easement for road or highway, public utilities and incidental purposes recorded as 94-0445317, of Official Records.

13. An easement for road or highway, public utilities and incidental purposes recorded as 94-0529835, of Official Records.

14. Intentionally Omitted

15. Intentionally Omitted

16. Intentionally Omitted

End of Schedule B - Section Two

7150 E. Camelback Rd., Ste 195
Scottsdale, AZ 85251
Phone: 480-222-1116
Fax: 480-222-1117

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information
In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information-particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information that you provide to us. Therefore, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability
This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity.

Types of Information
Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means.
- Information abut your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer-reporting agency.

Use of Information
We request information from you for our own legitimate business purposes and not for benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us, or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis.

Former Customers
Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security
We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities that need to know the information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Affidavit of Authority to Act as the Property Owner

1. This affidavit concerns the following parcel of land:

   a. Street Address: 34303 N. Hayden Rd. Scottsdale, AZ 85266
   b. County Tax Assessor's Parcel Number: 216-47-012B
   c. General Location: NEC Hayden Rd. & Olsen Rd. Alignment
   d. Parcel Size: +/- 10 AC
   e. Legal Description: See attached.

   (If the land is a platted lot, then write the lot number, subdivision name, and the plat's recording number and date. Otherwise, write "see attached legal description" and attach a legal description.)

2. I am the owner of the land or I am the duly and lawfully appointed agent of the owner of the land and have authority from the owner to sign this affidavit on the owner's behalf. If the land has more than one owner, then I am the agent for all of the owners, and the word "owner" in this affidavit refers to all of them.

3. I have authority from the owner to act for the owner before the City of Scottsdale with regard to any and all reviews, zoning map amendments, general plan amendments, development variances, abandonments, plats, lot splits, lot ties, use permits, building permits and other land use regulatory or related matters of every description involving the land, or involving adjacent or nearby lands in which the owner has (or may acquire) an interest, and all applications, dedications, payments, assurances, decisions, agreements, legal documents, commitments, waivers and other matters relating to any of them.

4. The City of Scottsdale is authorized to rely on my authority as described in this affidavit until three work days after the day the owner delivers to the Director of the Scottsdale Planning & Development Services Department a written statement revoking my authority.

5. I will immediately deliver to the Director of the City of Scottsdale Planning & Development Services Department written notice of any change in the ownership of the land or in my authority to act for the owner.

6. If more than one person signs this affidavit, each of them, acting alone, shall have the authority described in this affidavit, and each of them warrant to the City of Scottsdale the authority of the others.

7. Under penalty of perjury, I warrant and represent to the City of Scottsdale that this affidavit is true and complete. I understand that any error or incomplete information in this affidavit or any applications may invalidate approvals or other actions taken by the City of Scottsdale, may otherwise delay or prevent development of the land, and may expose me and the owner to other liability. I understand that people who have not signed this form may be prohibited from speaking for the owner at public meetings or in other city processes.

Name (printed)	Date	Signature
Anne VOS	3/20, 2018	
ALEX STEDMAN	3/20, 2018	
Tom Lemon	9.16., 2019	
	, 20__	

Planning and Development Services
7447 E Indian School Road, Suite 105, Scottsdale, AZ 85251 • Phone: 480-312-7000 • Fax: 480-312-7088

10-PP-2019
10/10/2019

Appeals of Dedication, Exactions or Zoning Regulations

CITY OF SCOTTSDALE

Rights of Property Owner

In addition to the other rights granted to you by the U.S. and Arizona Constitution, federal and state law and city ordinances or regulations, you are hereby notified of your right to appeal the following City actions relating to your property:

1) Any dedication of exaction which is required of you by an administrative agency or official of the city as a condition of granting approval of your request to use, improve or develop your real property. This appeal right does not apply to a dedication or exaction required as part of a city legislative act (for example a zoning ordinance) when an administrative agency or official has no discretion to determine the dedication or exaction.
2) The adoption or amendment of a zoning regulation that creates a taking of property in violations of Arizona and federal court decision.

Appeal Procedure

The appeal must be in writing and specify the City action appealed and the date final action was taken, and must be filed with or mailed to the hearing officer designated by the city within 30 days after the final action is taken

- No fee will be charged for filing
- The city Attorney's Office will review the appeal for compliance with the above requirements, and will notify you if your appeal does not comply
- Eligible appeals will be forwarded to the hearing officer, and a hearing will be scheduled within 30 days of receipt by the hearing officer of your request. Ten days notice will be given to you of the date, time and place of the hearing unless you indicate that less notice is acceptable to you.
- The City will submit a takings impact report to the hearing officer.
- In an appeal from a dedication or exaction, the City will bear the burden of proving that the dedication or exaction to be imposed on your property bears an essential nexus between the requirement and a legitimate governmental interest and that the proposed dedication or exaction is roughly proportional to the impact of the use, improvement or development you proposed.
- In an appeal from the adoption or amendment of a zoning regulation, the City will bear the burden of proving that any dedication of exaction requirement in the zoning regulation is roughly proportional to the impact of the proposed use, improvement, or development, and that the zoning regulation does not create a taking of property in violation of Arizona and federal court cases.
- The hearing officer must render his decision within five working days after the appeal is heard.
- The hearing officer can modify or delete a dedication or exaction or, in the case of an appeal from a zoning regulation, transmit a recommendation to the City Council.
- If you are dissatisfied with the decision of the hearing officer, you may file a complaint for a trial nevo with the Superior Court within 30 days of the hearing officer's decision.

For questions, you may contact:
City's Attorney's Office
3939 Drinkwater Blvd.
Scottsdale, AZ 85251
480-312-2405

Address your appeal to:
Hearing Officer, C/O City Clerk
3939 Drinkwater Blvd
Scottsdale, AZ 85251

Please be aware that City Staff cannot give you legal advice. You may wish, but are not required, to hire an attorney to represent you in an appeal.

Owner Certification
Acknowledging Receipt
Of
Notice Of Right To Appeal
Exactions And Dedications

I hereby certify that I am the owner of property located at:

34303 N. Hayden Road, Scottsdale AZ 85266

(address where development approval, building permits, or city required improvements and dedications are being required)

and hereby certify that I have received a notice that explains my right to appeal all exactions and/or dedications required by the City of Scottsdale as part of my property development on the parcel listed in the above address.

Signature of Property Owner

9.16.2019
Date

T. Lemon for
McDowell Citrus 100, LLC

First American Title™	ALTA Commitment for Title Insurance
	ISSUED BY **First American Title Insurance Company**
Commitment	File No. 4613TAZ

COMMITMENT FOR TITLE INSURANCE

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, **First American Title Insurance Company**, a Nebraska Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

Countersigned
Thomas Title & Escrow, LLC

By: Frank W Bunch
Authorized Signature

First American Title Insurance Company

Dennis J. Gilmore, President

Jeffrey S. Robinson, Secretary

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COMMITMENT CONDITIONS

1. DEFINITIONS

(a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.

(b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.

(c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.

(d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.

(e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.

(f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.

(g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.

(h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

(a) the Notice;

(b) the Commitment to Issue Policy;

(c) the Commitment Conditions;

(d) Schedule A;

(e) Schedule B, Part I—Requirements;

(f) Schedule B, Part II—Exceptions; and

(g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

(a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:

(i) comply with the Schedule B, Part I—Requirements;

(ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or

(iii) acquire the Title or create the Mortgage covered by this Commitment.

(b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.

(c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.

(d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.

(e) The Company shall not be liable for the content of the Transaction Identification Data, if any.

(f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.

(g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

(a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.

(b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.

(c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.

(d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.

(e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.

(f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is $2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at http://www.alta.org/arbitration.

Transaction Identification Data for reference only:
Issuing Agent: Thomas Title & Escrow, LLC
Issuing Office: Thomas Title & Escrow
Issuing Office's ALTA Registry ID:
Issuing Office File Number: 4613TAZ
Escrow Officer: Sheila Hunter
Title Officer: Scott Bryner

COMMITMENT FOR TITLE INSURANCE
Issued by
First American Title Insurance Company

SCHEDULE A

1. Commitment Date: **August 22, 2019, 05:00 pm**

2. Policy to be issued:
   (a) 2006 ALTA® Extended Coverage Owner's Policy

   Proposed Insured: **City of Scottsdale, a municipal corporation**

3A. The estate or interest in the land described in this Commitment and covered herein is **Fee Simple** and title thereto is at the effective date hereof vested in:

McDowell Citrus 100, LLC, an Arizona limited liability company

3B. Title to the estate herein described upon issuance of the Policy shall be vested in:

City of Scottsdale, a municipal corporation

4. The land referred to in this Commitment is described as follows:

SEE ATTACHED EXHIBIT "A"

EXHIBIT "A"

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

COMMITMENT FOR TITLE INSURANCE
Issued by
First American Title Insurance Company
SCHEDULE B, PART I
Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

2. Pay the agreed amount for the estate or interest to be insured.

3. Pay the premiums, fees, and charges for the Policy to the Company.

4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

5. All of 2018 taxes are paid in full.

   NOTE: Taxes are assessed in the total amount of $3,061.74 for the year 2018 under Assessor's Parcel No. 216-47-012B.

6. Intentionally Omitted

7. Intentionally Omitted.

8. Intentionally Omitted

9. Intentionally Omitted

10. Intentionally Omitted

11. Intentionally Omitted

12. Furnish a copy of the Articles of Organization, stamped "filed" by the Arizona Corporation Commission; a fully executed copy of the Operating Agreement, and any amendments thereto; and a list of the current members of McDowell Citrus 100, LLC, a(n) Arizona limited liability company. NOTE: Final determination as to which parties must execute all documents on behalf of the company shall be made upon compliance with above.

13. Record _____ Deed from McDowell Citrus 100, LLC, an Arizona limited liability company, to Buyer(s).

NOTE: The Company reserves the right to make further requirements and/or exception based upon its review of the documentation submitted to satisfy the above requirements.

End of Schedule B - Section One

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; and Schedule B, Part II-Exceptions.

SCHEDULE B, PART II
Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.

2. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records

3. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession thereof.

4. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the Public Records.

6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

7. Any lien or right to a lien for services, labor or material not shown by the Public Records.

Exceptions above will be eliminated from any A.L.T.A. Extended Coverage Policy, A.L.T.A. Homeowner's Policy, A.L.T.A. Expanded Coverage Residential Loan Policy and any short form versions thereof. However, the same or similar exception may be made in Schedule B of those policies in conformity with Schedule B, Part Two of this Commitment.

8. Taxes for the full year of 2019. (The first half is due October 1, 2019 and is delinquent November 1, 2019. The second half is due March 1, 2020 and is delinquent May 1, 2020).

9. Intentionally Omitted

10. Intentionally Omitted

11. An easement for road and incidental purposes recorded in Docket 1830, Page 153 and thereafter resolution vacating and abandoning a portion of the road, but reserving a public utility easement as set forth in Resolution recorded as 94-0332120, of Official Records.

12. An easement for road or highway, public utilities and incidental purposes recorded as 94-0445317, of Official Records.

13. An easement for road or highway, public utilities and incidental purposes recorded as 94-0529835, of Official Records.

14. Intentionally Omitted

15. Intentionally Omitted

16. Intentionally Omitted

End of Schedule B - Section Two

7150 E. Camelback Rd., Ste 195
Scottsdale, AZ 85251
Phone: 480-222-1116
Fax: 480-222-1117

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information
In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information-particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information that you provide to us. Therefore, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability
This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity.

Types of Information
Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means.
- Information abut your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer-reporting agency.

Use of Information
We request information from you for our own legitimate business purposes and not for benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us, or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis.

Former Customers
Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security
We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities that need to know the information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

September 10, 2019

Via Hand-Delivery with Application, to:

City of Scottsdale

Planning & Development Department

7447 E. Indian School Rd.

Scottsdale, AZ 85251

Re: Letter of Authorization – Estates at Hayden – 34303 N. Hayden Rd.

Dear Sir or Madam:

This letter authorizes RVi Planning + Landscape Architecture and Kimley-Horn and Associates to represent this ownership in all matters related to the City of Scottsdale's Preliminary Plat and any other development related matters regarding the property located at 34303 N. Hayden Rd. (APN #216-47-012B) in the City of Scottsdale, Maricopa County, Arizona.

Entity/Owner:
McDowell Citrus 100, LLC

Signature:
9.16.2019

T. Lemon
for McDowell Citrus 100, LLC.

10-PP-2019
10/10/2019