Lega

Title
Legal Description
Policy or Appeals
Correspondence Between Legal & Staff
Letter of Authorization



## DECLARATION OF CONFLICT OF INTEREST OR PERSONAL INTEREST

NAME:	,
PUBLIC BODY:	
DATE OF PUBLIC MEETING: 2018.	08.6 AGENDA ITEM NO.: 14-PP-20
DESCRIPTION OF ITEM: Wolf Sp	direg5
I declare that I have a "substantial interes matter, as provided in A.R.S. § 38-501 et sec conflict of interest in the decision or matter.	լ., and, therefore, declare that I have a
Describe the substantial interest held by you or	your relative(s) referred to above:
☐I don't believe that I have a substantial int decision or matter and, therefore, do not have Arizona law, but I believe that my active part decision or matter might raise the perception	ve a conflict of interest as provided by ticipation in the above-referenced
Explain:	
To avoid a conflict of interest or the percept as indicated above, I will refrain from partici decision(s) or matter(s) identified above.	
	2018,68,16
√ Signature	Date Signed

PLEASE NOTE: Completion and filing of this form with the City Clerk's Office is not, by itself, sufficient for a public officer to meet the requirements of the Conflict of Interest law and Code of Ethical Behavior (S.R.C. § 2-47 et seq.). To complete the requirements the public officer must state publicly at the meeting of the public body that he or she has a conflict of interest, or that participation might raise the perception of undue influence or impropriety; then recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.

A copy of this form will be filed as a supplement to the public officer's Personal Interest Disclosure form.



1.	This affidavit concerns the following parcel of land:
	<ul> <li>a. Street Address: 9319 E Desert Trail, Scottsdale, AZ 85260</li> <li>b. County Tax Assessor's Parcel Number: 217-24-858</li> <li>c. General Location: SEC of Desert Trail and 93rd Street</li> <li>d. Parcel Size: 15,952 sq ft</li> <li>e. Legal Description: Lot 44. Sweetwater Ranch Estates 2, Book 300 Page 25 (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.)</li> </ul>
	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.
	Tame (printed)  Date  Signature  Signature
_	11/13 , 20/7 - 20_
_	

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



1.	This affidavit concerns the following parcel of land:
	a. Street Address:9355 E Desert Trail, Scottsdale, AZ 85260 b. County Tax Assessor's Parcel Number:217-24-856
	c. General Location: SEC of Desert Trail and 93rd Street
	d. Parcel Size: 15,500 sq ft
	e. Legal Description: Lot 42, Sweetwater Ranch Estates 2, Book 300 Page 25
	(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.)
	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 a 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 magacquire) 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 wordays 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 preven 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.
١	Name (printed) Date Signature
_	CHargrapher I Frees 11-14 , 2017 Charlighe J Sous
_	Cheric & Frond 11-19. , 2017 De S
_	, 20
	, 20

CP\_Affidavit\_Authority

Page 1 of 1

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

Revision Date: 7-July-2014



1.	This	affidavit	concerns	the	following	parcel	of	land:
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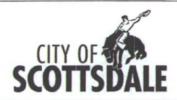
a. Street Address: 933	87 E Desert Trail,	Scottsdale, AZ	85260
------------------------	--------------------	----------------	-------

- b. County Tax Assessor's Parcel Number: 217-24-857
- c. General Location: SEC of Desert Trail and 93rd Street
- d. Parcel Size: 15,500 sq ft
- e. Legal Description: Lot 43, Sweetwater Ranch Estates 2, Book 300 Page 25
  (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.
- 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.

### **Planning and Development Services**

7447 E Indian School Road, Suite 105, Scottsdale, AZ 85251 \* Phone: 480-312-7000 \* Fax: 480-312-7088

## Appeals of Dedication, Exactions, or Zoning Regulations



**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.
- 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.

#### **Planning and Development Services**

7447 E. Indian School Road, Suite 105, Scottsdale, AZ 85251 ♦ Phone: 480-312-7000 ♦ Fax: 480-312-7088

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

I hereby certify that I am the owner of proj	perty located at:	
See Attached		
(address where development approval, but being required)	uilding permits, or city required improvemen	nts and dedications are
and hereby certify that I have received a notice that Scottsdale as part of my property development on t	at explains my right to appeal all exactions and/or decent the parcel listed in the above address.	dications required by the City of
Sharp on Orphosis	10/31/17	_
Signature of Property Owner	Date	

WOLF SPRINGS RANCH PRD				
Owner	Mailing Address	Property Address	APN	SQ FT
Empire Residential Communities Fund II, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	9370 E Cactus Road, Scottsdale, AZ 85260	217-24-019P	42700
Empire Residential Communities Fund II, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	12435 N 93rd St, Scottsdale, AZ 85260	217-24-018	19140
Empire Residential Communities Fund II, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	12435 N 93rd St, Scottsdale, AZ 85260	217-24-017A	9073
Empire Residential Communities Fund II, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	12435 N 93rd St, Scottsdale, AZ 85260	217-24-017B	100624
Empire Residential Communities Fund III, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	12475 N 93rd St, Scottsdale, AZ 85260	217-24-006	176897
Empire Residential Communities Fund III, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	9320 E Cactus Road, Scottsdale, AZ 85260	217-24-019N	4150:
Empire Residential Communities Fund III, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	9350 E Cactus Road, Scottsdale, AZ 85260	217-24-019M	41428
Empire Residential Communities Fund III, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	9390 E Cactus Road, Scottsdale, AZ 85260	217-24-019Q	43529



1.	This affidavit concerns the following parcel of la	and:	
	a. Street Address: See Attached		
	<ul> <li>b. County Tax Assessor's Parcel Number: S</li> </ul>	ee Attached	
	c. General Location: See Attached		
	d. Parcel Size: See Attached		
			subdivision name, and the plat's recording d legal description" and attach a legal
2.	<ol><li>I am the owner of the land or I am the duly and authority from the owner to sign this affidavit of then I am the agent for all of the owners, and the</li></ol>	on the owner	's behalf. If the land has more than one owner,
3.	plats, lot splits, lot ties, use permits, building every description involving the land, or involving	plan amendr permits and ng adjacent o ations, payn	ments, development variances, abandonments, other land use regulatory or related matters of or nearby lands in which the owner has (or may nents, assurances, decisions, agreements, legal
4.	4. The City of Scottsdale is authorized to rely or days after the day the owner delivers to the D Department a written statement revoking my au	Director of the	ty as described in this affidavit until three work e Scottsdale Planning & Development Services
5.	<ol><li>I will immediately deliver to the Director of Department written notice of any change in t owner.</li></ol>		Scottsdale Planning & Development Services ip of the land or in my authority to act for the
6.	<ol><li>If more than one person signs this affidavit, ea in this affidavit, and each of them warrant to the</li></ol>		
7.	invalidate approvals or other actions taken be development of the land, and may expose me a	mplete information in the city of and the owner of the city of the	City of Scottsdale that this affidavit is true and mation in this affidavit or any applications may of Scottsdale, may otherwise delay or preventer to other liability. I understand that people who for the owner at public meetings or in other city
1	Name (printed) Date		Signature
	Shelby Duplessis 10/31	, 20 17	Shalory Or Onology
-		. 20	
-			
-		, 20	
		, 20	

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

WOLF SPRINGS RANCH PRD				
Owner	Mailing Address	Property Address	APN	SQ FT
Empire Residential Communities Fund II, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	9370 E Cactus Road, Scottsdale, AZ 85260	217-24-019P	42700
Empire Residential Communities Fund II, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	12435 N 93rd St, Scottsdale, AZ 85260	217-24-018	191403
Empire Residential Communities Fund II, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	12435 N 93rd St, Scottsdale, AZ 85260	217-24-017A	90735
Empire Residential Communities Fund II, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	12435 N 93rd St, Scottsdale, AZ 85260	217-24-017B	100624
Empire Residential Communities Fund III, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	12475 N 93rd St, Scottsdale, AZ 85260	217-24-006	176897
Empire Residential Communities Fund III, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	9320 E Cactus Road, Scottsdale, AZ 85260	217-24-019N	41501
Empire Residential Communities Fund III, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	9350 E Cactus Road, Scottsdale, AZ 85260	217-24-019M	41428
Empire Residential Communities Fund III, LLC	6617 N Scottsdale Road, Suite 101, Scottsdale, AZ 85250	9390 E Cactus Road, Scottsdale, AZ 85260	217-24-019Q	43529

#### Security Title Agency, Inc.

#### COMMITMENT FOR TITLE INSURANCE

#### Issued by

#### CHICAGO TITLE INSURANCE COMPANY

Chicago Title Insurance Company, a FLORIDA corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 6 months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Countersigned:

Authorized Signature

Valalie Bombardie

1900/HA

Randy Quirk, Presi

Michael Gravella Servetani

72C101 (6/06)

ALTA Commitment – 2006

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#### Security Title Agency, Inc.

#### COMMITMENT FOR TITLE INSURANCE

#### **SCHEDULE A**

Name and Address of Title Insurance Company:

Security Title Agency, Inc. 4722 N. 24th St. Ste. 200, Phoenix, AZ 85016 Phone: (602) 230-6271

Fax: (602) 926-0452

Title Officer: Stacy Warns

File No.: 15170669-015-JBA

Escrow Officer: Jason Bryant

Effective date: September 18, 2017 at 7:30 a.m.

2. Policy or Policies to be issued:

Amount

a. ALTA 2006 Extended Owner's Policy

\$100,000.00

Proposed Insured:

Empire Residential Communities Fund II, a Delaware limited liability company, as to Parcels No. 2, 3 and 4 and Empire Residential Communities Fund III, a Delaware limited liability company, as to Parcels No. 1, 5A, 5B, 6A, 6B and 7

b. None

\$0.00

Proposed Insured:

c. None

\$0.00

Proposed Insured:

3. The estate or interest in the land described or referred to in this Commitment is:

A FEE, as to Parcels No. 1, 2, 3, 4, 5A, 6A and 7; AN EASEMENT, as to Parcels No. 5B and 6B

4. Title to the Fee estate or interest in the land is at the Effective Date <u>vested in:</u>

Empire Residential Communities Fund II, a Delaware limited liability company, as to Parcels No. 2, 3 and 4 and Empire Residential Communities Fund III, a Delaware limited liability company, as to Parcels No. 1, 5A, 5B, 6A, 6B and 7

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

See Exhibit A attached hereto and made a part hereof.

72C101A (6/06)

ALTA Commitment - 2006

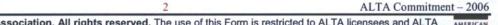
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## SCHEDULE A (Continued)

Issuing Agent for Chicago Title Insurance Company

72C101A (6/06)





#### EXHIBIT A

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (217-24-006)

The North half of the Northeast quarter of the Southwest quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

Except the East 25 feet; and

Except the West 25 feet; and

Except the West 30 feet of the East 55 feet of the North half of the Northeast quarter of the Southwest quarter of the Southwest quarter of said Section 18, except the North 25 feet thereof; and

Except the North 25 feet of the East 231 feet of the North half of the Northeast quarter of the Southwest quarter of the Southwest quarter of said Section 18.

PARCEL NO. 2: (217-24-018)

The North half of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

**EXCEPT** the East 55 feet; and

**EXCEPT THE West 25 feet.** 

PARCEL NO. 3: (217-24-017A and 017B)

The South half of the Northeast quarter of the Southwest quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

**EXCEPT** the East 55 feet; and

**EXCEPT** the West 25 feet.

PARCEL NO. 4: (217-24-019P)

The West 152.50 feet of the Southeast quarter of the Southeast quarter of the Southeast quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the South 40 feet thereof; and

EXCEPT the North 10 feet of the South 50 feet thereof, as deeded to the City of Scottsdale recorded in Recording No. 2006-0676706; and

EXCEPT any portion lying within the West 330 feet of the South half of the Southeast quarter of the Southeast quarter of the Southeast quarter of said Section 18.

72C101A (6/06) 3 ALTA Commitment – 2006



## EXHIBIT A (Continued)

PARCEL NO. 5A: (217-24-019N)

The East 152.50 feet of the West 330.00 feet of the South half of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the South 40.00 feet; and

EXCEPT the North 10.00 feet of the South 50.00 feet as granted to the City of Scottsdale recorded in Recording No. 94-0658212; and

EXCEPT the North 8.00 feet of the South 58.00 feet as conveyed to the City of Scottsdale recorded in Recording No. 2006-0482968.

#### PARCEL NO. 5B:

An easement for ingress, egress and public utilities over the East 25.00 feet of the West half of the Southwest quarter of the Southwest quarter; and over the West 25.00 feet of the East half of the Southwest quarter of the Southeast quarter of Section 18 Township 3 North, Range 5 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, as created in instrument recorded in <a href="Docket 2450">Docket 2450</a>, Page 358, records of Maricopa County, Arizona.

PARCEL NO. 6A: (217-24-019M)

The East 152.50 feet of the West 177.50 feet of the North 290.13 feet of the South half of the Southeast quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the South 40.00 feet; and

EXCEPT the North 10.00 feet of the South 50.00 feet as granted to the City of Scottsdale recorded in Recording No. 94-0658212; and

EXCEPT the North 8.00 feet of the South 58.00 feet as conveyed to the City of Scottsdale recorded in Recording No. 2006-0482968.

PARCEL NO. 6B:

An easement for ingress, egress and public utilities over the East 25.00 feet of the West half of the Southwest quarter of the Southwest quarter; and over the West 25.00 feet of the East half of the Southwest quarter of t

PARCEL NO. 7: (217-24-019Q)

ALTA Commitment – 2006
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merican Land

## EXHIBIT A (Continued)

The East 177.5 feet of the South half of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the South 40 feet; and also

EXCEPT the East 25 feet; and also

EXCEPT any portion lying within the West 152.5 feet of the Southeast quarter of the Southeast quarter of the Southeast quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; and also

EXCEPT that portion deeded to the City of Scottsdale in document recorded in Recording No. 1992-518904, records of Maricopa County, Arizona, and being described as follows:

That portion of the East 177.5 feet of the South half of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southeast corner of the Southwest quarter of the Southeast quarter of said Section 18;

THENCE North (assumed bearing) along the East line of the Southwest quarter of the Southeast quarter, 40.00 feet;

THENCE North 89 degrees 56 minutes 53 seconds West, 55.00 feet to the POINT OF BEGINNING;

THENCE continuing North 89 degrees 56 minutes 53 seconds West, 10.00 feet;

**THENCE North 5.00 feet;** 

THENCE North 45 degrees 01 minutes 34 seconds East, 14.14 feet to the West line of the East 55.00 feet of the Southwest quarter of the Southeast quarter;

THENCE South 15.00 feet to the POINT OF BEGINNING; and also

EXCEPT that portion deeded to the City of Scottsdale in document recorded in Recording No. 2007-1132285, records of Maricopa County, Arizona, and being described as follows:

The portion of the East 177.50 feet of the South half of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 18, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

COMMENCING at the Southeast corner of the Southwest quarter of the Southeast quarter of said Section 18;

THENCE along the East line of said Southwest quarter of the Southeast quarter North 00 degrees 02 minutes 25 seconds West 40.00 feet;

THENCE departing said East line parallel with and 40.00 feet North of the South line of said Southwest quarter of the Southeast quarter North 89 degrees 59 minutes 13 seconds West 65.00 feet to the Southwest corner of that real property as described in Recording No. 1992-518904 Maricopa County Records and the POINT OF BEGINNING;

## EXHIBIT A (Continued)

THENCE parallel with and 40.00 feet North of said South line North 89 degrees 59 minutes 13 seconds West 112.76 feet to the West line of said East 177.50 feet of the South half of the Southeast quarter of the Southwest quarter of the Southwest quarter;

THENCE along said West line North 00 degrees 00 minutes 11 seconds East 8.94 feet;

THENCE departing said West line parallel with an 48.94 feet North of said South line, South 89 degrees 59 minutes 13 seconds East 10.00 feet:

THENCE South 00 degrees 00 minutes 11 seconds West 4.17 feet to a point 44.77 feet North of said South line;

THENCE parallel with said South line South 89 degrees 59 minutes 13 seconds East 98.64 feet;

THENCE North 44 degrees 59 minutes 11 seconds East 19.95 feet to a point 55.00 feet West of said East line of the Southwest quarter of the Southeast quarter of said Section 18;

THENCE South 00 degrees 03 minutes 27 seconds East 3.89 feet to the Northeast corner of said real property as described in Recording No. 1992-518904 Maricopa County Records;

THENCE South 44 degrees 59 minutes 11 seconds West 14.14 feet to the Northwest corner of said real property;

THENCE South 00 degrees 02 minutes 25 seconds East 5.00 feet to the Southwest corner of said real property and the POINT OF BEGINNING.

#### SCHEDULE B - SECTION I

#### REQUIREMENTS

- Pay the agreed amounts for the interest in the Land and/or the mortgage to be insured.
- 2. Pay us the premiums, fees and charges for the policy.
- Documents satisfactory to us creating the interest in the Land and/or the mortgage to be insured must be signed, delivered and recorded.
- 4. You must tell us in writing the name of anyone not referred to in this commitment who will get an interest in the Land or who will make a loan on the Land. We may then make additional requirements or exceptions.
- 5. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
- 6. Payment of taxes for the first half of the year 2017, plus interest and penalties, if any.
- 7. An inspection of said Land has been ordered; upon its completion the Company reserves the right to except additional items and/or make additional requirements.
- 8. Furnish a plat of an ALTA/NSPS Land Title Survey. If the owner of subject property is in possession of a current ALTA/NSPS Land Title Survey, this Company will require that said Survey be submitted for review and approval. Otherwise, a new survey, satisfactory to the Company, must be prepared by a registered land surveyor and supplied to the Company prior to the close of escrow. The Company reserves the right to except additional items and/or make additional requirements after review of such survey.

Said Plat of Survey shall include the recommended certification and at the minimum, also have shown thereon Items 1, 2, 6, 8, 10, 11, 16, 18 and 19 from Table A thereof.

Note: If an ALTA 3.1 Zoning Endorsement is requested, Items 7a, 7b, 7c and 9 of Table A will also be required. The number and type of parking spaces must be shown on the survey. Property use information must also be provided to Chicago Title Insurance Company.

The Company will require that an Owner's Affidavit be completed by the party(s) named below before the issuance of any policy of title insurance.

Party(s):

Empire Residential Communities Fund II, a Delaware limited liability company, as to Parcels No. 2, 3 and 4 and Empire Residential Communities Fund III, a Delaware limited liability company, as to Parcels No. 1, 5A, 5B, 6A, 6B and 7

The Company reserves the right to add additional items or make further requirements after review of the requested Affidavit.

## SCHEDULE B – Section I (Continued)

10. The transaction contemplated in connection with this Report is subject to the review and approval of the Company's Corporate Underwriting Department. The Company will require a liability amount and list of requested endorsements prior to submitting the transaction for said approval. Failure to provide this information may result in the closing being delayed.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

11. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from the entity named below:

Limited Liability Company: Empire Residential Communities Fund II, a Delaware limited liability company

- a) A copy of its operating agreement, if any, and any and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member
- b) If a domestic Limited Liability Company, a copy of its Articles of Organization and all amendments thereto with the appropriate filing stamps
- c) If the Limited Liability Company is member-managed, a full and complete current list of members certified by the appropriate manager or member
- A current dated certificate of good standing from the proper governmental authority of the state in which the entity was created
- e) If less than all members, or managers, as appropriate, will be executing the closing documents, furnish evidence of the authority of those signing.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

## SCHEDULE B – Section I (Continued)

12. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from the entity named below:

Limited Liability Company:

Empire Residential Communities Fund III, a Delaware limited liability company

- a) A copy of its operating agreement, if any, and any and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member
- b) If a domestic Limited Liability Company, a copy of its Articles of Organization and all amendments thereto with the appropriate filing stamps
- c) If the Limited Liability Company is member-managed, a full and complete current list of members certified by the appropriate manager or member
- A current dated certificate of good standing from the proper governmental authority of the state in which the entity was created
- e) If less than all members, or managers, as appropriate, will be executing the closing documents, furnish evidence of the authority of those signing.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

- 13. The Proposed Policy Amount(s) must be increased to the full value of the estate or interest being insured, and any additional premium must be paid at that time. An Owner's policy should reflect the purchase price or full value of the Land. A Loan Policy should reflect the loan amount or value of the property as collateral. Proposed Policy Amount(s) will be revised and premiums charged consistent therewith when the final amounts are approved.
- 14. Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.

Upon confirmation by the owner of no open Deeds of Trust or Mortgages encumbering the Land described herein, furnish the Company an owner's Affidavit of no open Deed of Trust(s).

15. Furnish for recordation a deed as set forth below:

Type of deed:

Warranty Deed

Grantor(s):

Empire Residential Communities Fund II, a Delaware limited liability company and

Empire Residential Communities Fund III, a Delaware limited liability company

Grantee(s):

To Come

Note: ARS 11:1133 may require the completion and filing of an Affidavit of Value.

Tax Note:

Year:

2017

Tax Parcel No:

217-24-006 (Parcel No. 1)

Total Tax: First Installment Amount: \$4,880.88

Second Installment Amount:

\$2,440.44 \$2,440.44

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ALTA Commitment - 2006



## SCHEDULE B – Section I (Continued)

Tax Note:

 Year:
 2017

 Tax Parcel No:
 217-24-017 A (Portion of Parcel No. 3)

 Total Tax:
 \$3,089.52

First Installment Amount: \$1,544.76 Second Installment Amount: \$1,544.76

Tax Note:

Year: 2017

Tax Parcel No: 217-24-017B (Portion of Parcel No. 3)

Total Tax: \$12,117.64
First Installment Amount: \$6,058.82
Second Installment Amount: \$6,058.82

Tax Note:

Year: 2017

<u>Tax Parcel No: 217-24-018 (Parcel No. 2)</u>

Total Tax: \$12,869.96 First Installment Amount: \$6,434.98 Second Installment Amount: \$6,434.98

Tax Note:

Year: 2017

Tax Parcel No: 217-24-019M (Parcel No. 6A)

Total Tax: \$8,665.10
First Installment Amount: \$4,332.55
Second Installment Amount: \$4,332.55

Tax Note:

Year: 2017

Tax Parcel No: 217-24-019N (Parcel No. 5A)

Total Tax: \$4,907.42 First Installment Amount: \$2,453.71 Second Installment Amount: \$2,453.71

Tax Note:

Year: 2017

Tax Parcel No: 217-24-019P (Parcel No. 4)

Total Tax: \$3,384.98
First Installment Amount: \$1,692.49
Second Installment Amount: \$1,692.49

#### **SCHEDULE B - Section I** (Continued)

Tax Note:

Year:

217-24-019Q (Parcel No. 7) Tax Parcel No:

\$4,558.02 Total Tax: First Installment Amount: \$2,279.01 Second Installment Amount: \$2,279.01

END OF SCHEDULE B - SECTION I

Title Association.

#### SCHEDULE B - SECTION II

#### **EXCEPTIONS**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

- Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or A. attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires for the value of records the estate or interest or mortgage thereon covered by this Commitment.
- Exceptions and Exclusions from coverage which will appear in the policy or policies to be issued as set forth in B. Attachment One attached.
- Property taxes, including any personal property taxes and any assessments collected with taxes, for the second 1. installment of 2017 Taxes.
- 2. Reservations contained in the Patent

From:

The United States of America

To:

Adelbert N. Byers

Recording Date:

December 15, 1944

Recording No:

Book 423 of Deeds, Page 419

Which among other things recites as follows:

Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of the courts, and the reservation from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

- Water rights, claims or title to water, whether or not disclosed by the Public Records. 3.
- Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document: 4.

Purpose:

Electric lines

Recording Date:

June 30, 1954

Recording No:

Docket 1382, Page 473

(Affects Parcel No. 1)

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose:

Public utilities

Recording Date:

June 27, 1986

Recording No:

86-0325877

(Affects Parcel No. 1)

The Terms, conditions and provisions contained in the document entitle "Agreement by the City of Scottsdale" recorded June 29, 1977 in Docket 12293, Page 1022.

Affects Parcel No. 4

#### SCHEDULE B – Section II (Continued)

7. Matters contained in that certain document

Entitled:

City of Scottsdale Covenant and Agreement to Hold Property as One Parcel

Recording Date:

June 13, 2001

Recording No:

2001-0515720

Reference is hereby made to said document for full particulars.

(Affects Parcels No. 2 and 3)

8. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose:

Electric lines

Recording Date:

January 26, 1982

Recording No:

Docket 15788, Page 1184

(Affects Parcel No. 2)

9. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose:

Electric lines

Recording Date:

September 25, 1953

Recording No:

Docket 1207, Page 222 and

Recording Date:

May 15, 1954

Recording No:

docket 1350, Page 491

(Affects Parcel No. 4)

Matters contained in that certain document

Entitled:

City of Scottsdale Agreement

Recording Date:

July 26, 1979

Recording No:

Docket 13791, Page 1062

(Affects Parcel No. 5A)

11. Matters contained in that certain document

Entitled:

Covenant and Agreement to Hold Property as One Parcel

Recording Date:

June 10, 1988

Recording No:

88-283993

(Affects Parcel Nos. 5A and 6A)

12. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose:

**Communication Facilities** 

Recording Date:

October 25, 1989

Recording No: Re-Recording Date: 89-494067 and November 14, 1990

Re-Recording No:

90-509467

(Affects Parcel No. 6A)

#### **SCHEDULE B - Section II** (Continued)

Matters contained in that certain document 13.

Entitled:

Covenant and Agreement to Hold Property as One Parcel

Recording Date: Recording No:

August 05, 1994 94-0592244, and August 09, 1994

Re-Recording Date: Re-Recording No:

94-0599670

(Affects Parcel Nos. 5A and 6A)

14. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose:

**Public Trail** 

Recording Date:

September 02, 1994

Recording No:

94-0658210

(Affects Parcel Nos. 5A and 6A)

All matters as set forth on the survey recorded September 02, 1994 in Recording No. 94-0658210, recorded in 15. Recording No. 94-0658211, and recorded in Recording No. 94-0658212.

An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the 16. document

Lessor:

John D. Spero and Diane F. Spero

Lessee:

The Money Store Investment Corporation

Recording Date:

July 28, 1997

Recording No:

97-0507390

(Affects Parcel Nos. 5A and 6A)

Matters contained in that certain document 17.

Entitled:

Hazardous Substances Certificate and Indemnity

Recording Date:

July 28, 1997

Recording No:

97-0507391

(Affects Parcel Nos. 5A and 6A)

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document: 18.

Purpose:

Road or highway

Recording Date:

April 05, 1979

Recording No:

Docket 13549, Page 436

(Affects Parcel No. 7)

- 19. Matters which may be disclosed by an inspection and/or by a correct ALTA/NSPS Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.
- 20. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the Public Records.

ALTA Commitment - 2006

#### SCHEDULE B – Section II (Continued)

END OF SCHEDULE B - SECTION II

72C101BII (6/06) 15 ALTA Commitment – 2006



#### CONDITIONS

- The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
- 2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
- Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
- 4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
- 5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <a href="http://www.alta.org/">http://www.alta.org/</a>.



#### DISCLOSURE NOTICES

#### **GOOD FUNDS LAW**

Arizona Revised Statutes Section 6-843 regulates the disbursement of escrow funds by an escrow agent. The law requires that funds be deposited in the escrow agent's escrow account and available for withdrawal prior to disbursement. Funds deposited with the Company by wire transfer may be disbursed upon receipt. Funds deposited with the Company in the form of cashier's checks, certified checks or teller's checks, or checks which are made by an affiliate of a state or federally regulated depository institution when the check is drawn on that institution, may be disbursed the same day as deposited. If funds are deposited with the Company by other methods, recording and/or disbursement may be delayed.

#### PURCHASER DWELLING ACTIONS NOTICE

Pursuant to Arizona Revised Statutes Section 12-1363.N, notice is hereby provided to the purchaser of a dwelling of the provisions of Arizona Revised Statutes Sections 12-1361, 1362 and 1363. These statutory sections set forth the requirements to be met by a purchaser prior to bringing an action against the seller of a dwelling arising out of or related to the design, construction, condition or sale of the dwelling. "Dwelling" means a single or multifamily unit designed for residential use and common areas and improvements owned or maintained by an association or its members. "Seller" means any person, firm, partnership, corporation, association or other organization engaged in the business of designing, constructing or selling dwellings. The complete statutory sections can be viewed on the Arizona State Legislature's web site: www.azleg.state.az.us/ars/ars.htm.

#### NOTICE

Pursuant to Arizona Revised Statutes 11-480, effective January 1, 1991, the County Recorder may not accept documents for recording that do not comply with the following:

- a. Print must be ten-point type (pica) or larger.
- b. Margins of at least one-half inch along the left and right sides one-half inch across the bottom and at least two inches on top for recording and return address information.
- c. Each instrument shall be no larger than 8 ½ inches in width and 14 inches in length.

#### NOTICE:

Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirement cannot be met, please call the Company at the number provided in this report.

#### FIDELITY NATIONAL FINANCIAL

#### PRIVACY NOTICE

At Fidelity National Financial, Inc., we respect and believe it is important to protect the privacy of consumers and our customers. This Privacy Notice explains how we collect, use, and protect any information that we collect from you, when and to whom we disclose such information, and the choices you have about the use of that information. A summary of the Privacy Notice is below, and we encourage you to review the entirety of the Privacy Notice following this summary. You can opt-out of certain disclosures by following our opt-out procedure set forth at the end of this Privacy Notice.

Types of Information Collected. You may provide us with certain personal information about you, like your contact information, address demographic information, social security number (SSN), driver's license, passport, other government ID numbers and/or financial information. We may also receive browsing information from your Internet browser, computer and/or mobile device if you visit or use our websites or applications.	How Information is Collected. We may collect personal information from you via applications, forms, and correspondence we receive from you and others related to our transactions with you. When you visit our websites from your computer or mobile device, we automatically collect and store certain information available to us through your Internet browser or computer equipment to optimize your website experience.
Use of Collected Information. We request and use your personal information to provide products and services to you, to improve our products and services, and to communicate with you about these products and services. We may also share your contact information with our affiliates for marketing purposes.	When Information Is Disclosed. We may disclose your information to our affiliates and/or nonaffiliated parties providing services for you or us, to law enforcement agencies or governmental authorities, as required by law, and to parties whose interest in title must be determined.
Choices With Your Information. Your decision to submit information to us is entirely up to you. You can opt-out of certain disclosure or use of your information or choose to not provide any personal information to us.	<b>Information From Children.</b> We do not knowingly collect information from children who are under the age of 13, and our website is not intended to attract children.
<b>Privacy Outside the Website.</b> We are not responsible for the privacy practices of third parties, even if our website links to those parties' websites.	International Users. By providing us with you information, you consent to its transfer, processing and storage outside of your country of residence, as well as the fact that we will handle such information consistent with this Privacy Notice.
The California Online Privacy Protection Act. Some FNF companies privacy websites collect information on behalf of mortgage loan servicers. The morany consumer information submitted through those websites.	ovide services to mortgage loan servicers and, in some cases, their rtgage loan servicer is responsible for taking action or making changes to
Your Consent To This Privacy Notice. By submitting information to us or by using our website, you are accepting and agreeing to the terms of this Privacy Notice.	Access and Correction; Contact Us. If you desire to contact us regarding this notice or your information, please contact us at privacy@fnf.com or as directed at the end of this Privacy Notice.

## FIDELITY NATIONAL FINANCIAL, INC. PRIVACY NOTICE

Fidelity National Financial, Inc. and its majority-owned subsidiary companies providing title insurance, real estate- and loan-related services (collectively, "FNF", "our" or "we") respect and are committed to protecting your privacy. We will take reasonable steps to ensure that your Personal Information and Browsing Information will only be used in compliance with this Privacy Notice and applicable laws. This Privacy Notice is only in effect for Personal Information and Browsing Information collected and/or owned by or on behalf of FNF, including Personal Information and Browsing Information collected through any FNF website, online service or application (collectively, the "Website").

#### **Types of Information Collected**

We may collect two types of information from you: Personal Information and Browsing Information.

#### Personal Information. FNF may collect the following categories of Personal Information:

- · contact information (e.g., name, address, phone number, email address);
- · demographic information (e.g., date of birth, gender, marital status);
- social security number (SSN), driver's license, passport, and other government ID numbers;
- · financial account information; and
- other personal information needed from you to provide title insurance, real estate- and loan-related services to you.

#### Browsing Information. FNF may collect the following categories of Browsing Information:

- Internet Protocol (or IP) address or device ID/UDID, protocol and sequence information;
- · browser language and type;
- domain name system requests;
- browsing history, such as time spent at a domain, time and date of your visit and number of clicks;
- · http headers, application client and server banners; and
- · operating system and fingerprinting data.

#### **How Information is Collected**

In the course of our business, we may collect Personal Information about you from the following sources:

- applications or other forms we receive from you or your authorized representative;
- · the correspondence you and others send to us;
- · information we receive through the Website;
- information about your transactions with, or services performed by, us, our affiliates or nonaffiliated third parties; and
- information from consumer or other reporting agencies and public records maintained by governmental entities that we obtain directly from those entities, our affiliates or others.

#### If you visit or use our Website, we may collect Browsing Information from you as follows:

- Browser Log Files. Our servers automatically log each visitor to the Website and collect and record certain browsing information about each visitor. The Browsing Information includes generic information and reveals nothing personal about the user.
- Cookies. When you visit our Website, a "cookie" may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. When you visit a website again, the cookie allows the website to recognize your computer. Cookies may store user preferences and other information. You can choose whether or not to accept cookies by changing your Internet browser settings, which may impair or limit some functionality of the Website.

#### **Use of Collected Information**

Information collected by FNF is used for three main purposes:

- To provide products and services to you or any affiliate or third party who is obtaining services on your behalf or in connection with a transaction involving you.
- · To improve our products and services.
- . To communicate with you and to inform you about our, our affiliates' and third parties' products and services, jointly or independently.

#### When Information Is Disclosed

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) and Browsing Information to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Please see the section "Choices With Your Personal Information" to learn how to limit the discretionary disclosure of your Personal Information and Browsing Information.

Disclosures of your Personal Information may be made to the following categories of affiliates and nonaffiliated third parties:

- to third parties to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to our affiliate financial service providers for their use to market their products or services to you;
- to nonaffiliated third party service providers who provide or perform services on our behalf and use the disclosed information only in connection with such services;
- to nonaffiliated third party service providers with whom we perform joint marketing, pursuant to an agreement with them to market financial products or services to you;
- to law enforcement or other governmental authority in connection with an investigation, or civil or criminal subpoena or court order:
- to lenders, lien holders, judgment creditors, or other parties claiming an interest in title whose claim or interest must be determined, settled, paid, or released prior to closing; and

· other third parties for whom you have given us written authorization to disclose your Personal Information.

We may disclose Personal Information and/or Browsing Information when required by law or in the good-faith belief that such disclosure is necessary to:

- comply with a legal process or applicable laws;
- · enforce this Privacy Notice;
- investigate or respond to claims that any material, document, image, graphic, logo, design, audio, video or any other information provided by you violates the rights of a third party; or
- protect the rights, property or personal safety of FNF, its users or the public.

We maintain reasonable safeguards to keep your Personal Information secure. When we provide Personal Information to our affiliates or third party service providers as discussed in this Privacy Notice, we expect that these parties process such information in compliance with our Privacy Notice or in a manner that is in compliance with applicable privacy laws. The use of your information by a business partner may be subject to that party's own Privacy Notice. Unless permitted by law, we do not disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent.

We reserve the right to transfer your Personal Information, Browsing Information, and any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of our bankruptcy, reorganization, insolvency, receivership or an assignment for the benefit of creditors. You expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings. We cannot and will not be responsible for any breach of security by a third party or for any actions of any third party that receives any of the information that is disclosed to us.

#### **Choices With Your Information**

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you. The uses of your Personal Information and/or Browsing Information that, by law, you cannot limit, include:

- for our everyday business purposes to process your transactions, maintain your account(s), to respond to law
- · enforcement or other governmental authority in connection with an investigation, or civil or criminal subpoenas or court
- orders, or report to credit bureaus;
- · for our own marketing purposes;
- · for joint marketing with financial companies; and
- for our affiliates' everyday business purposes information about your transactions and experiences.

You may choose to prevent FNF from disclosing or using your Personal Information and/or Browsing Information under the following circumstances ("opt-out"):

- · for our affiliates' everyday business purposes information about your creditworthiness; and
- · for our affiliates to market to you.

To the extent permitted above, you may opt-out of disclosure or use of your Personal Information and Browsing Information by notifying us by one of the methods at the end of this Privacy Notice. We do not share your personal information with non-affiliates for their direct marketing purposes.

<u>For California Residents</u>: We will not share your Personal Information and Browsing Information with nonaffiliated third parties, except as permitted by California law. Currently, our policy is that we do not recognize "do not track" requests from Internet browsers and similar devices.

For Nevada Residents: You may be placed on our internal Do Not Call List by calling (888) 934-3354 or by contacting us via the information set forth at the end of this Privacy Notice. Nevada law requires that we also provide you with the following contact information: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: BCPINFO@ag.state.nv.us.

<u>For Oregon Residents</u>: We will not share your Personal Information and Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes.

<u>For Vermont Residents</u>: We will not share your Personal Information and Browsing Information with nonaffiliated third parties, except as permitted by Vermont law, such as to process your transactions or to maintain your account. In addition, we will not share information about your creditworthiness with our affiliates except with your authorization. For joint marketing in Vermont, we will only disclose your name, contact information and information about your transactions.

#### Information From Children

The Website is meant for adults and is not intended or designed to attract children under the age of thirteen (13). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian. By using the Website, you affirm that you are over the age of 13 and will abide by the terms of this Privacy Notice.

#### **Privacy Outside the Website**

The Website may contain links to other websites. FNF is not and cannot be responsible for the privacy practices or the content of any of those other websites.

#### International Users

FNF's headquarters is located within the United States. If you reside outside the United States or are a citizen of the European Union, please note that we may transfer your Personal Information and/or Browsing Information outside of your country of residence or the European Union for any of the purposes described in this Privacy Notice. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection and transfer of such information in accordance with this Privacy Notice.

#### The California Online Privacy Protection Act

FNF Privacy Statement (Eff. 5/1/2015) Last Updated March 1, 2017 MISC0219 (DSI Rev. 3/2/17)

For some FNF websites, such as the Customer CareNet ("CCN"), FNF is acting as a third party service provider to a mortgage loan servicer. In those instances, we may collect certain information on behalf of that mortgage loan servicer via the website. The information which we may collect on behalf of the mortgage loan servicer is as follows:

- first and last name;
- · property address;
- user name and password;
- loan number;
- social security number masked upon entry;
- email address:
- three security questions and answers; and
- IP address.

The information you submit through the website is then transferred to your mortgage loan servicer by way of CCN. The mortgage loan servicer is responsible for taking action or making changes to any consumer information submitted through this website. For example, if you believe that your payment or user information is incorrect, you must contact your mortgage loan servicer.

CCN does not share consumer information with third parties, other than (1) those with which the mortgage loan servicer has contracted to interface with the CCN application, or (2) law enforcement or other governmental authority in connection with an investigation, or civil or criminal subpoenas or court orders. All sections of this Privacy Notice apply to your interaction with CCN, except for the sections titled "Choices with Your Information" and "Access and Correction." If you have questions regarding the choices you have with regard to your personal information or how to access or correct your personal information, you should contact your mortgage loan servicer.

#### **Your Consent To This Privacy Notice**

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information by us in compliance with this Privacy Notice. Amendments to the Privacy Notice will be posted on the Website. Each time you provide information to us, or we receive information about you, following any amendment of this Privacy Notice will signify your assent to and acceptance of its revised terms for all previously collected information and information collected from you in the future. We may use comments, information or feedback that you submit to us in any manner that we may choose without notice or compensation to you.

#### Accessing and Correcting Information; Contact Us

If you have questions, would like to access or correct your Personal Information, or want to opt-out of information sharing with our affiliates for their marketing purposes, please send your requests to privacy@fnf.com or by mail or phone to:

Fidelity National Financial, Inc. 601 Riverside Avenue Jacksonville, Florida 32204 Attn: Chief Privacy Officer (888) 934-3354

#### **ATTACHMENT ONE (01-01-08)**

## AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

- Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - land use
  - · improvements on the land
  - land division
  - · environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

- 2. The right to take the land by condemning it, unless:
  - a notice of exercising the right appears in the public records on the Policy Date
  - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and the expenses resulting from:

- Any rights, interests, or claims of parties in possession of the land not shown by the public records.
- 2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.

- 3. Title Risks:
  - · that are created, allowed, or agreed to by you
  - that are known to you, but not to us, on the Policy Date—unless they appeared in the public records
  - that result in no loss to you
  - that first affect your title after the Policy Date—this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
- Failure to pay value for your title.
- Lack of a right:
  - to any land outside the area specifically described and referred to in Item 3 of Schedule A
  - · in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks

- Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.
- Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

#### ATTACHMENT ONE (CONTINUED)

## FORMERLY AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92) WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
- Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
- (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
- (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent

insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or

- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
- 4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
- Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
- 6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
- 7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
- (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine or equitable subordination; or
- (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
  - (a) to timely record the instrument of transfer; or
- (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

- Taxes or assessments which 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. Proceedings by a public agency which 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.
- Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
- 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.
- 5. (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.
- Any lien or right to a lien for services, labor or material not shown by the Public Records.

### ATTACHMENT ONE (CONTINUED)

#### 2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
- (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
- Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
- Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truthin-lending law.
- Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
- (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
- 7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

- (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.
- 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 of the Land.
- Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
- 5. (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.
- Any lien or right to a lien for services, labor or material not shown by the Public Records.

### ATTACHMENT ONE (CONTINUED)

### FORMERLY AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

- 3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
     (b) not known to the Company, not recorded in the public records
- (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
- 4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
- (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
  - (a) to timely record the instrument of transfer; or
- (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage Policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

- Taxes or assessments which 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. Proceedings by a public agency which 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.
- Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
- Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
- 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.
- 5. (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.
- Any lien or right to a lien for services, labor or material not shown by the Public Records.

# ATTACHMENT ONE (CONTINUED)

### 2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
- or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;

- (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
- 4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
- (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
- 5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

- (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.
- Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
- Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- 4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
- 5. (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.
- Any lien or right to a lien for services, labor or material not shown by the Public Records.

### ATTACHMENT ONE (CONTINUED)

# ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03) EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

- Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoningc. Land use
  - d. improvements on Land
  - e. land division
  - f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

- The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
- The right to take the Land by condemning it, unless:

- a. notice of exercising the right appears in the Public Records at the Policy Date; or
- b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
- 4. Risks:
- a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records.
- b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
- d. that first occur after the Policy Date—this does not limit the coverage described in Covered Risk 7, 8.d., 22, 23, 24 or 25.
- 5. Failure to pay value for Your Title.
- 6. Lack of a right:
- a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

### LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

For Covered Risk 14, 15, 16, and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
 The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

Covered Risk 14:	Your Deductible Amount 1% of Policy Amount or \$2,500.00 (whichever is less)	Our Maximum Dollar Limit of Liability \$10,000.00
Covered Risk 15:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 16:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 18:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$5,000.00

# ATTACHMENT ONE (CONTINUED)

# ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (01-01-08) EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

- Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and
  - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

- 2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
- The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

- 4. Risks:
- that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
- b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
- d. that first occur after the Policy Date—this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
- 5. Failure to pay value for Your Title.
- Lack of a right:
- a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and

Our Maximum Dollar

b. in streets, alleys, or waterways that touch the Land.

### LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

Covered Risk 16:	Your Deductible Amount  1% of Policy Amount Shown in Schedule A  or  \$2,500.00  (whichever is less)	Limit of Liabili \$10,000.00
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$5,000.00

# ATTACHMENT ONE (CONTINUED)

### ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14 and 16 of this policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records a Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
- Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
- 3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
- (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss damage to the Insured Claimant;

- (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
- (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
- 4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
- 5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth-in-lending law.
- 6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
- 7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
- 8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:
  - (a) The time of the advance: or
- (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
- 9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

### ATTACHMENT ONE (CONTINUED)

#### ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (01-01-08)

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to
  - the occupancy, use, or enjoyment of the Land;
  - the character, dimensions or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
- or the effect of any violation of these laws, ordinances or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
  - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
- not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
- (c) resulting in no loss or damage to the Insured Claimant;
  (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
- Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
- Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
- Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
- Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
- The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

### **WOLF SPRINGS**

### **PROPERTY DESCRIPTION**

That portion of the Southwest quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows;

COMMENCING at the Southeast corner of said Section 18, from which the South quarter corner of said Section 18, bears North 89° 59′ 08″ West (basis of bearing) a distance of 2641.61 feet;

Thence North 89° 59′ 08″ West along the South line of said Section 18, a distance of 1321.02 feet, to the Southeast corner of the Southwest quarter of said Southeast quarter, Section 18;

Thence North 00° 02′ 09" West along the East line of said Southwest quarter, a distance of 40.00 feet;

Thence North 89° 59' 08" West a distance of 25.00 feet to the POINT OF BEGINNING;

Thence North 89° 59′ 08″ West along a line 40 feet North of and parallel to said South line a distance of 30.00 feet;

Thence North 00° 02' 09" West a distance of 19.32 feet;

Thence South 44° 08′ 53″ West a distance of 19.95 feet to a point lying 45.00 feet North of said South line;

Thence North 89° 59′ 08″ West along a line 45.00 feet North of and parallel to said South line a distance of 98.64 feet;

Thence North 00° 02′ 09" West a distance of 5.00 feet to a point lying 50.00 feet North of said South line;

Thence North 89° 59′ 08″ West along a line 50.00 feet North of and parallel to said South line a distance of 162.54 feet;

Thence North 00° 02′ 09″ West a distance of 8.00 feet to a point lying 58.00 feet North of said South line;

Thence North 89° 59′ 08″ West along a line 58.00 feet North of and parallel to said South line a distance of 293.11 feet;

Thence North 45° 00′ 44″ West a distance of 16.96 feet to a point on the East right of way line of 93<sup>rd</sup> Street;

Thence North 00° 02′ 09″ West along said East right of way line a distance of 1250.82 feet, to a point on the North line of the South half of the Southwest quarter of the Southeast quarter of said Section 18;

Thence South 89° 59′ 16″ East along said North line a distance of 404.18 feet;

Thence South 00° 02′ 09" East a distance of 25.00 feet to a point South of said North line;

Thence South 89° 59′ 16″ East along a line 25.00 feet South of and parallel to said North line, a distance of 176.00 feet to appoint on the West right of way line of 94<sup>th</sup> Street;

Thence South 00° 02′ 09" East along said West right of way line a distance of 965.64 feet;

Thence South 89° 59′ 08″ East a distance of 30.00 feet to a point on said East line of said Southwest quarter;

Thence South 00° 02′ 09" East along said East line a distance of 290.19 feet to the POINT OF BEGINNING.

Said described parcel contains 739,562 square feet or 16.98 acres more or less.

This overall description was derived from the combined parcels described in Commitment for Title Insurance, by Security Title Agency, Inc., File No. 15170669-015-JBA, dated September 18, 2017.

# WHEN RECORDED, RETURN TO:

ERC Management, LLC 6617 N. Scottsdale Road, Suite 101 Scottsdale, AZ 85250

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WOLF SPRINGS RANCH COMMUNITY ASSOCIATION

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WOLF SPRINGS RANCH

This Declaration of Coven	ants, Conditions, a	and Restrictions for	Wolf	Springs	Ranch (this
"Declaration") is made this _	day of	, 201_	by E	Empire	Residential
Communities Fund II, LLC, a I	Delaware limited	liability company	("Fund	d II") a	and Empire
Residential Communities Fund I	II, LLC, a Delaw	are limited liabilit	y com	pany (	'Fund III"),
Fund II and Fund III being collectively referred to as the "Project Declarant".					

# INTRODUCTION

- A. Fund II and Fund III are the Owners of fee title to the real property located in Scottsdale, Arizona, legally described on Exhibit A attached hereto (the "Property").
- B. By executing and recording this Declaration with the County Recorder of Maricopa County, Arizona, the Project Declarant intends to impose upon the Property mutually beneficial covenants, conditions, restrictions and easements to establish a flexible and reasonable procedure for the overall development, administration, maintenance, use and preservation of the Property. The Project Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Property and which will be binding upon all future Owners of all or any portion of the Property and any other Person acquiring any right, title or interest in or to all of any portion of the Property.
- C. The Project Declarant deems it desirable to provide for the creation of a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair and replace the Areas of Association Responsibility and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Areas of Association Responsibility and the enforcement of the covenants, conditions and restrictions contained in this Declaration.

# ARTICLE 1 DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

1.1 "Areas of Association Responsibility" means (a) all Common Area; and (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot or Parcel or a public right-of-way or other area which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or other Recorded document executed by the Declarant or the Association (including but not limited to the Landscape Easement and any roadway medians adjoining the Project in Larkspur Drive and 94<sup>th</sup> Street.

- 1.2 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.
- 1.3 "Assessable Lot" means, during the Declarant Control Period, a Lot owned by a Person other than the Declarant. After the termination of the Declarant Control Period, all Lots shall be Assessable Lots.
  - 1.4 "Assessment" means a Regular Assessment or Special Assessment.
  - 1.5 "Assessment Lien" means the lien created and imposed by Article 7.
  - 1.6 "Assessment Period" means the period set forth in Section 7.4.
- 1.7 "Association" means Wolf Springs Ranch Community Association, an Arizona nonprofit corporation, and its successors and assigns. The Declarant intends to incorporate the Association under such name, however, during the Declarant Control Period, the Declarant reserves the right to incorporate the Association under such other name as the Declarant deems appropriate.
- 1.8 "Association Rules" means the rules and regulations adopted by the Board pursuant to Section 6.3.
  - 1.9 "Board" means the Board of Directors of the Association.
  - 1.10 "Bylaws" means the Bylaws of the Association, as amended from time to time.
  - 1.11 "City" means the City of Scottsdale, Arizona.
- 1.12 "Common Area" means (a) the Tracts shown on a Plat and designated as Common Areas, together with all improvements situated thereon, and (b) all land, together with all Improvements situated thereon, which 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 the Association acquires by the foreclosure of the Assessment Lien or any deed in lieu of foreclosure.
- 1.13 "Common Expenses" means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.
- **1.14** "Community Documents" means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules, and the Design Guidelines, all as amended from time to time.
- 1.15 "Construction" means any de-vegetation, revegetation, excavation, or grading work or the construction, erection or installation of an Improvement on a Lot or Parcel.

- 1.16 "Declarant" or "Project Declarant" means Fund II and Fund III, and any Person to whom it or they may expressly assign any or all of its/their rights under this Declaration by a Recorded instrument.
- 1.17 "<u>Declarant Control Period</u>" means the period commencing upon the Recording of this Declaration and ending on the date that the Class B membership in the Association terminates pursuant to <u>Section 6.7</u>.
- 1.18 "<u>Declaration</u>" means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.
- 1.19 "Design Guidelines" means the reasonable procedures rules, regulations, restrictions, architectural standards and guidelines adopted by the Design Review Committee pursuant to Section 3.12, as amended or supplemented from time to time.
- 1.20 "Design Review Committee" means the committee which may be created by the Board pursuant to Section 3.12, and if no Design Review Committee has been created by the Board, reference in this Declaration to the Design Review Committee shall be deemed to be a reference to the Board.
- 1.21 "Developers" or "Developer" means the Declarant or any entity affiliated with the Declarant engaged in the marketing of Lots and/or Residences.
- 1.22 "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.
  - 1.23 "First Mortgagee" means the holder or beneficiary of any First Mortgage.
- 1.24 "Improvement" means: (a) any Residence, building, fence or wall; (b) any swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (c) any road, driveway or parking area; (d) any trees, plants, shrubs, grass or other landscaping improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, (f) any lighting fixture, mailbox structure or permanent signage, and (g) any other structure of any type, kind or nature.
- 1.25 "Landscape Easement" means that certain landscape easement recorded at Instrument No. \_\_\_\_\_\_\_, records of Maricopa County, Arizona, relating to the maintenance of landscaping along the northern boundary of a portion of Larkspur Drive, north of the Project.
- 1.26 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of the lessee's or tenant's interest under a lease.
- 1.27 "Lot" means a parcel of land within the Project, whether improved or unimproved, intended for independent ownership and use and designated as a "lot" on the Plat and any Residence, building, structure or other Improvement situated thereon.

- 1.28 "Maintenance" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.
- 1.29 "Maintenance Standard" means the standard of Maintenance of Improvements situated on Lots established from time to time by the Board or, in the absence of any standard established by the Board, the standard of Maintenance of Improvements situated on Lots generally prevailing throughout the Project.
- **1.30** "Member" means any Person who is a member of the Association as provided in Section 6.6.
- 1.31 "Modification" means an addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot or Parcel.
- 1.32 "Northern Adjoining Lots" means Lots 42,43 and 44 of SWEETWATER RANCH ESTATES UNIT II, according to the plat recorded at Book 300, page 25, records of Maricopa County, located in Scottsdale, Arizona.
- equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. In the case of Lots subject to an option agreement, the optionor shall be deemed to be the Owner. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 et. seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of a Lot subject to a deed of trust pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of a Lot the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.
- **1.34** "Parcel" means a portion of the Project subjected to this Declaration but not yet included in a Plat, if any.
- 1.35 "Person" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- 1.36 "Plat" means any subdivision plat Recorded against all or any portion of the Property described on Exhibit A, in the records of the County Recorder of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.
- 1.37 "Property" or "Project" means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon.

- 1.38 "Purchaser" means any Person, other than the Declarant or a Developer, who becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to the Declarant or a Developer for use as a model in connection with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.
- 1.39 "Recording" means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and Recorded means having been so placed of public record.
  - 1.40 "Regular Assessment" means the Assessments levied pursuant to Section 7.2.
- 1.41 "Residence" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.
  - 1.42 "Resident" means each Person occupying or residing in any Residence.
  - 1.43 "Special Assessment" means any assessment levied pursuant to Section 7.3.
- 1.44 "Visible From Neighboring Property" means, with respect to any given Improvement, that such Improvement is or would be visible to a natural person six feet tall, standing at ground level on any part of any Lot, the Common Area or any public street within or adjacent to the Project at the same elevation as the object being viewed; provided, however, an Improvement shall not be deemed Visible from Neighboring Property if the Improvement is visible only through a view fence (such as a wrought iron fence) or similar gate, had such fence or gate been a solid fence or gate.

# ARTICLE 2 PROPERTY AND PERSONS BOUND BY DECLARATION

2.1 Purpose and Binding Effect. Declarant is the record owner of fee title to the Property. Declarant intends by this Declaration to impose upon the Property covenants, conditions, restrictions and easements to create a general plan of development for the Property and to provide a flexible and reasonable procedure for the administration, maintenance, preservation, use and enjoyment of the Property. The Declarant declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value, desirability and appearance of the Property. Declarant further declares that all of easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and all Owners, Lessees and Residents and all other Persons having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Property, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association.

Disclaimer of Implied Covenants. No representation or warranty is made by 2.2 Declarant or Developers that (i) the Project will be completed in accordance with the zoning or development plans for the Project as they exist on the date this Declaration is Recorded; (ii) any portion of the Project will be committed to or developed for a particular use or for any use. except that all such uses shall be consistent with the development of the Project for Single Family residential purposes; or (iii) the use of any portion of the Project will not be changed in the future. No warranties or representations express or implied, are made by the Declarant or Developers as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to the Project. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration. No representations or warranties of any kind, express or implied, have been given or made by the Declarant, Developers, or their agents, consultants, or employees in connection with the Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration or in a Public Report for the Project issued to the Declarant or a Developer, or in any written contract executed by the Declarant or a Developer.

# 2.3 Security/Access Gates.

- 2.3.1 Electronically activated access gate(s) may be constructed at the entrance to the Project in order to limit access and provide more privacy for the Owners and the other Residents and Lessees of the Lots. Each Owner, Lessee and Resident acknowledges and agrees that the access gates do not guarantee the safety or security of the Owners, Lessees or Residents or their guests or guarantee that only authorized persons will gain access through such access gate(s). Each Owner, Lessee and Resident, and their families, guests and invitees, acknowledge and agree to assume the risk that the access gates may restrict or delay entry into, or access within, certain areas by police, fire department, ambulances and other emergency vehicles or personnel. Each Owner understands that any privacy measures that are in effect at the time he/she becomes an Owner, including but not limited to access gates, may be abandoned. removed and/or modified by a majority vote of the Board. The commencement of any such devices, features, measures or controls shall not be deemed to be an assumption of any duty on the part of the Association or Declarant or Developers with respect to the Project. Neither the Declarant, Developers, the Association, nor any director, officer, agent or employee of the Declarant, Developers or the Association, shall be liable to any Owner, Lessee or Resident or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence, operation or maintenance of the access gates.
- 2.3.2 Each Owner, Lessee, and Resident hereby releases the Declarant, Developers, and the Association, and their directors, officers, agents, and employees from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting from the existence of such access gates and activities or occurrences described in Section 2.3.1 above.

2.3.3 Notwithstanding anything contained in this Declaration to the contrary, so long as the Declarant or a Developer is selling or leasing Lots within the Project or constructing Residences or Common Areas, no restrictions shall be approved by the Board or otherwise imposed upon the Declarant or Developers, and their contractors, employees, agents, or prospective buyers, which restricts access through the gated entry for prospective buyers or Declarant or Developer contractors or which restrict construction traffic or access to the Project though the gated entry, restricts the hours when construction work may be performed, eliminates any easements for construction purposes reserved to the Declarant or Developers in this Declaration. The foregoing shall survive the termination of the Declarant Control Period.

# ARTICLE 3 ARCHITECTURAL CONTROL

# 3.1 Approval Required.

- 3.1.1 Except as otherwise provided in <u>Subsection 3.1.3</u>, no Construction or Modification shall be made or done without the prior written approval of the Design Review Committee; provided, however, the provisions of this Article do not apply to, and approval of the Design Review Committee shall not be required for any Construction or Modification or any other work made by, or on behalf of, the Declarant or the Developers. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a Residence without approval so long as such activity does not affect the exterior appearance of the Residence. The reconstruction of Common Areas by the Association or the Declarant after destruction by casualty or otherwise which is accomplished in substantial compliance with "as built" plans for the Common Areas, shall not require compliance with the procedural provisions of this <u>Article 3</u> or the Design Guidelines.
- 3.1.2 Any Owner desiring approval of the Design Review Committee for any Construction or Modification shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the Construction or Modification that the Owner desires to perform. The request for approval must be accompanied by plans and specifications showing the nature, kind, color, shape, height, materials and location of the Improvements, such other information as may be required by the Design Guidelines, and additional information, plans and specifications that the Design Review Committee may reasonably request (a "Completed Application").
- 3.1.3 If the Design Review Committee fails to approve or disapprove a Completed Application within forty-five (45) days after the Completed Application, together with any fee payable pursuant to Section 3.6 has been submitted to the Design Review Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

3.1.4 Except as may be provided in <u>Subsection 3.1.3</u>, any consent or approval of the Design Review Committee required under this Declaration shall not be effective unless it is in writing and signed by the Design Review Committee members or the Person to whom responsibility for a particular consent or approval has been delegated pursuant to <u>Section 3.7</u>.

# 3.2 Review of Plans.

- 3.2.1 In reviewing plans and specifications for any Construction or Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (a) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Design Review Committee but not yet constructed; (b) the location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; (c) the exterior design, finish materials and color of the proposed Improvements; and (d) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, in its sole and absolute discretion, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive.
- 3.2.2 Decisions of the Design Review Committee may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration; provided, however, that after the termination of the Declarant Control Period, an Owner who has submitted plans and specifications for any Construction or Modification or any other Owner adversely affected by the decision of the Design Review Committee with respect to such submittal may appeal the decision of the Design Review Committee to the Board in accordance with such procedures as may be adopted from time to time by the Board.
- 3.2.3 The approval required of the Design Review Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. Without limiting the generality of the foregoing, all excavation and grading of a Lot, whether for landscaping or other purposes, shall be consistent at all times with the drainage plans on file with the City and good engineering practices.
- 3.2.4 The Design Review Committee, by resolution, may exempt certain Construction or Modifications from the application and approval requirements of this <u>Article 3</u>, provided such Construction or Modifications are undertaken in strict compliance with the requirements of such resolution.

3.3 <u>Variances</u>. The Design Review Committee may authorize variances from compliance with any provision of the Design Guidelines in circumstances where the design meets the intent of the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require, and the Design Review Committee determines, in its sole discretion, that the objective of the particular requirement can still be achieved. No variance shall be effective unless in writing and signed by an authorized representative of the Design Review Committee. No variance may be contrary to this Declaration or estop the Design Review Committee from denying a variance in other circumstances including, without limitation, circumstances similar or identical to circumstances under which the Design Review Committee previously granted a variance. For purposes of this Section, the inability to obtain approval of any governmental agency, issuance of any permit, or the terms of any financing shall not constitute hardships.

# 3.4 Construction of Improvements/Inspection/Recording of Approval.

- 3.4.1 Upon receipt of approval from the Design Review Committee for any Construction or Modification, the Owner who had requested such approval shall proceed with the Construction or Modification approved by the Design Review Committee as soon as practicable and shall diligently pursue such Construction or Modification so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Committee.
- 3.4.2 Any member or authorized consultant of the Design Review Committee, and any authorized officer, director, employee or agent of the Association, may at any reasonable time, without being deemed guilty of trespass, and upon reasonable notice to the Owner, enter upon any Lot or Parcel (except the interior of any occupied Residence), in order to inspect the Construction or Modification of Improvements to ascertain that such Construction or Modification of Improvements have been or are being made in compliance with the Design Guidelines, the Declaration, and the approval of the Design Review Committee. Within thirty (30) days of a request from any Owner as to such Owner's Lot or Parcel, the Design Review Committee shall cause an inspection of such Owner's Construction or Modification of Improvements. If such inspection reveals that the Construction or Modification of Improvements have been completed in compliance with this Article 3 and the Declaration, the Design Review Committee shall provide the Owner a notice of approval in recordable form which, when Recorded, shall be conclusive evidence of compliance with the provisions of this Article 3 and the Declaration as to only the Construction or Modification of Improvements described in such Recorded notice.
- 3.5 No Changes Without Approval. Any Construction or Modification approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee.
- 3.6 Review Fee. The Design Review Committee shall have the right to charge a fee to Owners for reviewing requests for approval of any Construction or Modification, which fee

shall be payable at the time the application for approval is submitted to the Design Review Committee. The fee charged by the Design Review Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Design Review Committee in consulting with, or having the application reviewed by, architects, engineers or other professionals.

- 3.7 <u>Consultants.</u> The Design Review Committee may delegate its review responsibilities for plans and specifications, except final review and approval as may be required by the Design Guidelines, by retaining one or more architects, engineers or other Persons deemed necessary at the discretion of the Design Review Committee. Upon such delegation, the interim approval or disapproval of plans and specifications shall be equivalent to interim approval or disapproval by the entire Design Review Committee.
- 3.8 New Construction. All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.
- No Warranty/Approval for Engineering Design or Compliance. Plans and specifications approved by the Design Review Committee as provided in this Article 3 are not approved for engineering design or for compliance with any applicable zoning ordinances, building codes, other federal, state or local law, statute, ordinance, or rules or regulations. By approving such plans and specifications neither the Design Review Committee, nor any member thereof or any consultant hired by the Design Review Committee, nor the Association, the Declarant, or any officer, director, employee, or agent of the Association or Declarant, nor any Member of the Association (collectively the "Approving Parties"), assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. The Approving Parties shall not be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans and specifications; (c) the change in the size, configuration or location of any building envelope or the changing of the natural grade of any Lot or Parcel; or (d) the execution and filing of an estoppel certificate pursuant to the Design Guidelines, whether or not the facts therein are correct; provided however, that such action was taken in good faith with the actual knowledge possessed by the individual acting. Approval of plans and specifications by the Design Review Committee or the approval of any change in the size, configuration or location of any building envelope, or a change in the natural grade of any Lot or Parcel is not, and shall not be deemed to be, a representation or warranty that said drawings, specifications, or changes comply with applicable governmental regulations including, but not limited to, federal, state, or local law, statute, rules or regulations, ordinances and building codes, or a warranty or representation as to the quality of such Construction or Modification.
- 3.10 <u>Conditional Approval</u>. The Design Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Design Review Committee in an amount determined by the Design Review Committee to be reasonably sufficient to: (a) assure the completion of the proposed Construction or Modification of

Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Construction or Modification of Improvements, and (b) repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Provided there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond shall be released or security shall be fully refundable to the Owner upon the completion of the Construction or Modification of Improvements in accordance with the plans and specifications approved by the Design Review Committee and the Owner's written request to the Design Review Committee.

3.11 Improvements to Areas of Association Responsibility. Except as otherwise provided in Section 3.1.1 regarding initial site work, if plans and specifications submitted to the Design Review Committee pertain to a Construction or Modification of an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the Maintenance and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Construction or Modification with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the Maintenance or replacement of such Improvement.

# 3.12 Design Review Committee.

- 3.12.1 So long as the Declarant or Developers own one or more Lots which are being marketed for sale, or a Parcel or portion thereof, the Declarant shall have the sole right (a) to determine if a Design Review Committee will be established or if the Board will act in such capacity: (b) to determine the number of members on the Design Review Committee; and (c) to appoint and remove the members of the Design Review Committee (if any). At such time as the Declarant and Developers no longer own any Lot being marketed for sale, the Board shall have the right to determine the foregoing with regard to the Design Review Committee. All members of the Design Review Committee appointed by the Board shall serve for a term of one year, subject to the right of the Board to remove such person from the Committee prior to the expiration of such committee member's term. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Design Review Committee, and in that event the Declarant may require, for so long as the Declarant or Developers own any Lot which is being marketed for sale, or a Parcel or portion thereof, that specified actions of the Design Review Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. Members of the Design Review Committee need not be Owners or Residents of the Project.
- 3.12.2 The Design Review Committee may establish Design Guidelines that the Design Review Committee may, from time to time, amend, repeal, or augment so long as the Design Guidelines, as amended, repealed or augmented, are (a) consistent with the Declaration; (b) are in harmony with the general aesthetics of the Project, and (c) during the period set forth in Section 3.12.1 above, approved by the Declarant, and after termination of such period, approved by the Board.
- 3.12.3 The Design Guidelines shall be deemed to be a part of the Declaration, and shall be binding upon all Owners, Members, or other Persons as if expressly set forth herein;

however, the Design Guidelines may be amended as set forth in <u>Section 3.12.2</u> without requiring an amendment to this Declaration. A copy of the current Design Guidelines shall at all times be part of the Association's records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

- (a) Time limitations for completion of the Construction or Modification of Improvements within specified periods after approval by the Design Review Committee.
- (b) Designation of a "Building Envelope" within a Lot thereby establishing the area of the Lot within which development may occur.
- (c) Procedures for assuring conformity of completed Construction or Modification of Improvements to plans and specifications approved by the Design Review Committee; provided, however, only as to purchasers and encumbrances in good faith and for value, the completed Construction or Modification of Improvements shall be deemed to be in compliance with plans and specifications approved by the Design Review Committee and in compliance with the architectural standards of the Association and the Declaration unless (i) a notice of non-completion or nonconformance executed by the Design Review Committee identify the violating Lot and specifying the reason for the notice, is Recorded and given to the Owner of such Lot within the later of (1) one year after expiration of the time limitation described in Subsection 3.12.3(a) above or (2) legal proceedings have been instituted to enforce compliance or completion of the Construction or Modification of Improvements with such one-year period.
- (d) Such other limitations and restrictions as the Design Committee, in its reasonable discretion, shall adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants); Construction or Modification or Maintenance of any Improvement, including, but not limited to, the nature, kind, shape, height, materials, exterior colors, surface textures, and location of any such Improvement.
- (e) The Design Review Committee, at the request of an Owner and with the consent of the Declarant (so long as the Declarant owns any Lot or Parcel in the Project) and the City, if applicable, may, but shall have no obligation to, (a) change the size, configuration or location of any building envelope on a Lot; or (b) approve the change in the natural grade of a Lot or Parcel, or portions thereof, by cut, fill or similar procedures.
- (f) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE DESIGN REVIEW COMMITTEE MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN REQUIRED APPROVALS FROM THE DESIGN REVIEW COMMITTEE, OR FAILURE TO COMPLY WITH THE REQUIREMENTS OF SUCH APPROVALS, AND MAY REQUIRE SECURITY DEPOSITS OR BONDS TO ASSURE COMPLIANCE WITH SUCH APPROVALS, REVEGETATION, OR REPAIR OF DAMAGE TO COMMON ELEMENTS DURING THE PERFORMANCE OF AN OWNER'S CONSTRUCTION OR MODIFICATION.

- 3.12.4 The Design Review Committee may establish one or more subcommittees consisting of one or more members of the Design Review Committee and may delegate to such subcommittee or subcommittees the authority and power of the Design Review Committee to approve or disapprove any Construction or Modification within a specified portion of the Project.
- 3.12.5 The establishment of the Design Review Committee and the procedures herein for architectural approval shall not be construed as diminishing any rights or restrictions upon Owners to maintain or repair their Lots or Parcels as may otherwise be specified in the Community Documents.
- 3.12.6 The address of the Design Review Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines or by written notice to Owners. Such address shall be the place for the submittal of plans and specifications and the place where the current Design Guidelines are kept.

# ARTICLE 4 USE RESTRICTIONS

### 4.1 Residential Use.

- 4.1.1 All Residences shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residence, except that the Owner. Lessee or other Resident of a Residence may conduct a business activity within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Project; (c) the business activity does not involve persons coming to the Lot to purchase goods or services or the door-to-door solicitation of Owners, Lessees or Residents in the Project; (d) the use of the Residence for trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood and is not a nuisance, or a hazardous or offensive use, or a threat to the security or safety of other Residents of the Project, a may be determined in the sole discretion of the Board.; (e) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (f) any employee working in or from such Residence parks their vehicle on the driveway of the applicable Residence, and not on the streets within the Project; (g) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (h) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (i) the use of the Residence for a trade or business does not violate any other provision of the Community Documents.
- 4.1.2 The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of

goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section. The use of model homes by the Declarant or a Developer or the use of Project facilities by the Declarant or Developers for the purpose of developing and marketing the Project are not considered a trade or business within the meaning of this Section.

- 4.2 <u>Temporary Occupancy and Temporary Buildings</u>. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Except for temporary buildings, trailers or other structures used by the Declarant or Developers, temporary buildings, trailers or other structures used during the Construction or Modification of Improvements approved by the Design Review Committee shall be removed immediately after the completion of such Construction or Modification, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve (12) months without the prior written approval of the Design Review Committee.
- 4.3 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot or other property, and no odors or loud noises shall be permitted to arise or emit from any Lot or property, so as to render any such Lot or property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No condition shall be permitted to exist or operate upon any Lot or other property so as to be unreasonably offensive or detrimental to any other property in the vicinity thereof or to its Residents, as determined by the Board. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property. No Person shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. Normal construction activities and parking in connection with the building of Improvements shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods; trash and debris shall not be permitted to accumulate; and supplies of brick, block, lumber and other building materials will be located only in such areas as may be approved in writing by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Design Review Committee, which may require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Declarant or Developers.
- 4.4 Antennas and Solar Equipment. To the extent permitted by applicable law, the installation of antennas, satellite dishes or other devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation and the installation of solar panels, pipes, lines or equipment for the purposes of providing heated water or a supplemental source of power shall be subject to the prior written approval of the Design Review

Committee. Therefore, no antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals and no solar panels, pipes, lines or equipment for the purposes of providing heated water or a supplemental source of power shall be constructed, installed, erected, used or maintained on any Lot without the prior written approval of the Design Review Committee unless applicable law prohibits the Design Review Committee from requiring such approval. Even if applicable law prohibits the Design Review Committee from requiring prior approval for the installation of certain antennas or solar equipment, any such antennas and solar equipment must still be installed in accordance with the Design Guidelines. and, nothing shall preclude the Association from adopting reasonable safety and/or architectural aesthetics Rules which do not impede the Owner's ability to obtain solar power or to obtain adequate reception from a protected class of satellite dishes or antennas with the scope of the FCC Rules. Without limiting the foregoing, all satellite dishes and antennas within the scope of the FCC Rules shall be ground-mounted and placed in the rear or fenced side yard of a Lot unless, as a result of such placement, the Owner is not able to obtain a satisfactory signal as defined in the FCC Rules.

- 4.5 <u>Trash Containers and Collection</u>. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Design Review Committee. In no event shall such containers be kept or placed on a Lot so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot. The City requires that collection of garbage, trash and recycling will take place at the curb of each Lot outside of any driveways and sitevisibility triangles.
- 4.6 <u>Utility Service</u>. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures by the Declarant or Developers, or approved by the Design Review Committee.
- 4.7 Overhead 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 Design Review Committee.
- 4.8 Animals. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that a reasonable number (as determined by the Board in its sole and absolute discretion, but in no event less than two pets) of dogs, cats, parakeets or similar household birds (collectively "Permitted Pets") which may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes and provided such Permitted Pets are not a nuisance to any other Owner. All Permitted Pets shall be confined to an Owner's Lot, except that a dog or cat may be permitted to leave an Owner's Lot if such dog or cat is not

permitted to enter upon any other Lot. No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. Any person bringing a Permitted Pet onto the Common Area (or any Lot) shall immediately remove any solid waste deposited on the Common Area (or any Lot) by the Permitted Pet. The Board may restrict the portions of the Common Area on which Permitted Pets are permitted. No structure for the care, housing or confinement of any Permitted Pet shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, one or more Permitted Pets are creating a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. The Board may adopt Association Rules further restricting and governing animals within the Project, which Association Rules may include, without limitation rules providing for the removal from the Project of a domestic pet which has bitten or attacked a person or other animal, has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Project or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Residents.

- 4.9 <u>Machinery and Equipment</u>. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with residential use of property, or machinery or equipment necessary for the Construction or Modification of Improvements on a Lot, or such machinery or equipment used by the Declarant or Developers in constructing Common Areas and Residences, or such machinery or equipment that the Association may require for the operation and Maintenance of the Project.
- 4.10 <u>Signs</u>. Except for signs constructed or erected by the Declarant, Developers, or by the Association, no signs whatsoever may be erected, posted or displayed on any Lot in a location that is Visible from Neighboring Property, or on the Areas of Association Responsibility without the prior written approval of the Design Review Committee, unless applicable law prohibits the requirement for approval from the Design Review Committee.

# 4.11 Further Subdivision, Property Restrictions, Rezoning and Timesharing.

4.11.1 Without the prior written approval of the Board, no Owner other than the Declarant shall do any of the following: (a) further subdivide a Lot or separate the Lot into smaller lots or parcels; (b) convey or transfer less than all of a Lot; or (c) replat the Lot or combine the Lot with other Lots. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Design Review Committee and the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration. Notwithstanding anything to the contrary in this Declaration, the density for the Project shall not be increased to more than 40 single family Lots and the size of the Lots shall not be materially decreased from the sizes as shown on the initial Plat of the Project without the written approval of the owners of the Northern Adjoining Lots; provided, however, such restriction on materially changing the size of the Lots shall not apply to a combination of two or

more Lots; boundary line adjustments between Lots; the grant of easements over any of the Lots; or changes in the location or boundaries of any Common Areas (including streets) within the Project. The provisions of the immediately preceding sentence may not be deleted from this Declaration nor amended without the written approval of the owners of the Northern Adjoining Lots.

- 4.11.2 Lots 6 through 10 and Lots 17, 18 and 25 shall be limited to single story residences (but this shall not preclude a basement on any residence on any such Lot).
- 4.11.3 Elevated decks, balconies or platforms on the rear or sides of residences constructed on Lots 8, 9 or 10 (or if renumbered, the three Lots backing up to the Northern Adjoining Lots) are prohibited unless approved in writing by the Owners of the Northern Adjoining Lots. The provisions of the immediately preceding sentence may not be deleted from this Declaration nor amended without the written approval of the owners of the Northern Adjoining Lots.
- 4.11.4 The Plat may not be amended to provide for any interior street of the Project to be located adjacent to or within 120 feet from the southern boundary of the Northern Adjoining Lots. The provisions of the immediately preceding sentence may not be deleted from this Declaration nor amended without the written approval of the owners of the Northern Adjoining Lots.
- 4.11.5 No Lot or Residence construction thereon may be used and/or occupied by any Person pursuant to any joint or common ownership, use and/or occupancy by three (3) or more Unrelated Persons (defined below) during any 365-day period for the primary purpose of allocating periodic use or occupancy of such Residence among Unrelated Persons, or their lessees, sub-lessees, assignees, or permittees on an ongoing basis over time pursuant to a timesharing plan, fractional ownership-interest plan, fractional private residence-club plan, membership residential-privilege plan, or any other similar type of plan or arrangement (collectively "Timesharing Plan"), regardless of whether such arrangement constitutes a timesharing plan or timeshare interests under Arizona law or under the laws of any other particular state. Any type of Timesharing Plan, whether or not the Lot or Residence is owned by one Person, and whether or not currency or another form of compensation, trade, or barter is provided in exchange for the use of the Lot and Residence, is prohibited. For purposes of this Section, "Unrelated Persons" means purchasers or holders of such rights of use or occupancy, whether by owning a fee title interest, or by holding some other right or interest, or some other right of occupancy, whether or not any interest in the Lot or Residence is connected to said right, directly or indirectly, individually or through a corporation, partnership, limited liability company, trust or other entity, who are not related by blood, adoption or marriage. In calculating three (3) or more Unrelated Persons, a husband and wife and their children (including the children of either spouse), or a family trust or any other entity comprised exclusively of the same people, shall collectively constitute only one Unrelated Person.
- 4.12 <u>Vehicles and Parking</u>. No automobile, van, sport utility vehicle, pickup truck, bus, motorcycle, motorbike, all-terrain vehicle, utility or commercial vehicle, recreational vehicle, mobile home, trailer, boat or other watercraft, oversized vehicle, or inoperable vehicle may be parked or stored within the Project so as to be Visible From Neighboring Property except for: (i) the parking (including overnight parking) of no more than two automobiles, vans, sport utility vehicles

or pickup trucks on the driveway situated on a Lot, (ii) temporary parking of a motor home, travel trailer, camper, recreational vehicle or boat and boat trailer on the driveway situated on a Lot for a period of not more than twenty-four (24) consecutive hours and not more than forty-eight (48) hours within any seven (7) day period for the purpose of loading or unloading such vehicle or equipment; (iii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the Construction or Modification of any Improvement approved by the Design Review Committee; or (iv) the temporary parking of a vehicle owned by a guest or invitee on any road or street in the Project for a period of not more than forty-eight consecutive hours. Nothing in this Section shall be deemed to preclude the parking or storage of the above described vehicles, boats, or trailers within a garage. No vehicle, boat, or trailer of any type or kind including, but not limited to, those listed above may be constructed, reconstructed, or repaired upon a Lot or any other property within the Project so as to be Visible From Neighboring Property except for emergency repairs. The Board shall have the right and power to adopt Association Rules governing and further restricting the parking of motor vehicles on the streets and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the Association Rules, the provisions of this Section shall control. The provisions of this Section do not apply to the parking of motor vehicles of the Declarant, Developers, or their employees, affiliates, contractors, and prospective buyers in connection with development and completion of Improvements on the Property and the marketing of Lots within the Project.

- 4.13 <u>Drainage</u>. No Lot shall be graded or contoured and no Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the approved drainage plans on file with the municipality in which the Project is located. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans.
- 4.14 <u>Garages</u>. No garage shall be converted to living space or altered or used for storage of material or other purposes which would prevent the use of the garage for the parking of the number of vehicles for which it was designed, except that the Declarant and Developers may use a garage in one or more model homes for a sales office and/or a construction office.
- **4.15** Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Residence or other building so as to be Visible From Neighboring Property.
- 4.16 <u>Basketball Goals and Backboards</u>. No permanent basketball goal or backboard shall be constructed, installed or maintained on any Lot which would be Visible From Neighboring Property without the prior written approval of the Design Review Committee.
- **4.17** <u>Playground Equipment.</u> No jungle gyms, swing sets or similar playground equipment which would be Visible from Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Design Review Committee.

# 4.18 Rental of Lots.

- 4.18.1 No Owner may lease less than its entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Community Documents and that any violation of this Declaration or the Association Rules by the Lessee or the other occupants shall be a default under the lease.
- 4.18.2 At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees and each other person who will reside in the Residence during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases its Lot and the Residence situated thereon must provide the Lessee with copies of this Declaration, the Design Guidelines and the Association Rules.
- 4.18.3 Any lease of a Lot or Residence situated thereon must be for an initial term of at least three (3) months. The Owner shall be liable for any violation of this Declaration, the Design Guidelines or the Association Rules by the Lessees or other persons residing in the Residence and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.
- 4.19 <u>Screening Materials</u>. All screening materials, 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 such Improvements by the Declarant, Developers, or as approved by the Design Review Committee pursuant to <u>Article 3</u>.
- 4.20 <u>Lights</u>. Except as initially installed by the Declarant or Developers, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the Design Review Committee.
- 4.21 <u>Window Cover Materials</u>. Within sixty (60) days after issuance of a Certificate of Occupancy for a Residence, the Owner shall install permanent draperies or suitable window coverings on all windows facing the street. No reflective materials (including, without limitation, aluminum foil or reflective screens, mirrors or similar items) shall be installed or placed upon the outside or inside of any windows of a Residence without the prior written approval of the Design Review Committee.
- 4.22 <u>Variances</u>; <u>Diminution of Restrictions</u>. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this <u>Article 4</u> if the Board determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete; and (ii) that the activity permitted under the

variance will not have any substantial adverse effect on the Owners and Residents of the Project and is consistent with the high quality of life intended for Residents of the Project. If any restriction set forth in this Article 4 is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable. Notwithstanding the foregoing, the Board may not grant a variance to the restrictions set forth in Sections 4.11.1, 4.11.3 or 4.11.4 if the requested variance impacts the North Adjoining Lots, without the written consent of the owners of the North Adjoining Lots.

# ARTICLE 5 EASEMENTS

# 5.1 Easements for Use of Common Area.

- 5.1.1 Subject to the rights and easements granted to the Declarant, Developers, and the Association in this Article, every Owner and Resident and their guests shall have a right and easement of enjoyment in and to the Common Areas, which right shall be appurtenant to and shall pass with the title to every Lot, subject to:
  - (a) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 6.10; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner and Residents of the Lot and their guests and invitees.
  - (b) The right of the Board to adopt Association Rules or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such portions of the Common Area (such as landscaped areas) not intended for use by the Owners, Lessees or Residents.
  - (c) The right of the Association to suspend the right of an Owner, and such Owner's family, Lessees, and guests to use the Common Area (other than the right of an Owner or Lessee and their family members and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Community Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.
  - (d) The rights and easements reserved by or granted to the Declarant or Developers by this Declaration.

- (e) The rights and easements, if any, reserved or granted to the Declarant, Developers, or any other Person in the deed conveying the Common Area to the Association.
- (f) The right of the Association to rent, lease or otherwise permit the use of any portion of the Common Area on a short-term basis to an Owner or Resident for the exclusive use of such Owner or Residents and their guests and invitees.
- (g) The right of the Board to charge reasonable admission or other fees for the use of any recreational facility or amenity situated on the Common Area.
- (h) The right of the Board to permit the use of any recreational facility or amenity situated on the Common Area by persons other than Owners or Residents and their guests upon payment of such fees as may be established by the Board.
- (i) The rights and easements, if any, reserved or granted to the Declarant or any other Person in the deed conveying the Common Area to the Association.
- (j) The right of the Declarant or the Association to convey certain portions of the Common Areas to Owners of adjoining Lots in connection with the correction or adjustment of the boundary between the Common Area and adjoining Lots.
- 5.1.2 The right of easement and enjoyment of the Common Area may not be transferred or assigned except upon the conveyance or transfer of the Lot to which such right is appurtenant.
- 5.1.3. If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease (other than the right of such Owner and their family members to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot).

# 5.2 Utility and Development Easements.

5.2.1 A non-exclusive, perpetual blanket easement is hereby granted over and through the Common Area for the purpose of: (a) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property or adjacent land any utilities, including, without limitation, water, sewer, drainage, natural gas, electricity, telephone and television service, whether public or private; (b) ingress and egress to install,

construct, operate, maintain, repair and replace such equipment; and (c) storm water management and storm water drainage, as necessary or desirable for the orderly development of the Property. Such easement is hereby granted to any Person providing the aforesaid utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Declarant, where contemplated on any site plan approved by the Declarant, or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Declarant. The Person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and shall restore the surface of the land and the surrounding vegetation and improvements to their original condition as soon as possible.

5.2.2 The Declarant hereby reserves the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the purposes set forth in this Section or for any other purpose necessary or desirable for the orderly development of the Property. If the Person installing the utility or providing a service requests a specific easement by separate recordable documents, then the Declarant or the Association shall have the power to record a document locating such easements.

# 5.3 Easements to Facilitate Development.

- 5.3.1 The Declarant hereby reserves to itself, its duly authorized agents, employees, representatives, successors and assigns, including but not limited to any Developer, a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, and as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising the rights granted to or reserved by the Declarant or to Developers by this Declaration, including without limitation: (a) temporary construction easements; (b) easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (c) easements for the construction, installation and Maintenance of Improvements on the Property or Improvements reasonably necessary to serve the Property.
- 5.3.2 The Declarant hereby reserves to itself, its duly authorized agents, employees, representatives, successors and assigns including, but not limited to any Developer, the right to: (a) use any Lots owned or leased by the Declarant or a Developer, any other Lot with written consent of the Owner thereof, or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; and (b) install and maintain on the Common Area, any Lot owned or leased by the Declarant or a Developer, or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which the Declarant deems necessary for the development, sale or lease of the Property. The right reserved to Declarant and Developers under this Section shall be in such number, of such size and in such locations as the Declarant deems appropriate. So long as the Declarant is marketing lots the Declarant shall have the right to restrict the use of parking spaces situated on the Common Area and to reserve such parking spaces for use by prospective purchasers of Lots, the Declarant's contractors, subcontractors,

suppliers, agents or employees or other Persons engaged in sales, marketing or construction activities for or on behalf of the Declarant.

- 5.3.3. In the event of any conflict or inconsistency between the provisions of this Section and any other provision of this Declaration, this Section shall control.
- 5.4 <u>Dedications and Easements Required by Governmental Authority.</u> The Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

# 5.5 <u>Intentionally Omitted.</u>

- 5.6 Further Assurances. Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements granted and reservations made to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.
- 5.7 <u>Assignment of Development Rights</u>. The Declarant may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or Maintenance on any portion of the Property.
- The Association and its Easement for Maintenance and Enforcement. directors, officers, agents, contractors and employees, the Design Review Committee and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any occupied Residence), for: (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents; (b) making inspections in order to verify that all Improvements on the Lot have been constructed or modified in accordance with the plans and specifications for such Improvements approved by the Design Review Committee and that all Improvements are being properly Maintained as required by the Community Documents; (c) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (d) performing installations or Maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for Maintenance (if any); or (e) correcting any condition which violates the Community Documents. Except in case of emergency, the Association shall only enter a Lot at reasonable times and upon reasonable notice to the Owner or, if the Lot is leased, to the Lessee. In the event of an emergency, the Association may enter a Lot without prior notice to the Owner or the Lessee, but promptly following the Association's entry into the Lot, the Association shall notify the Owner or the Lessee of the nature of the emergency condition which required entry without notice.
- 5.9 <u>Easements for Encroachments</u>. If any Improvements on any Lot or portion of the Common Area now or hereafter encroach on any other portion of the Property by reason of: (a) the original construction thereof; (b) deviations within normal construction tolerances in the

Maintenance of any Improvement; or (c) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

- 5.10. Granting Easements in Favor of Adjoining Owners. The Declarant or the Board shall have the right to grant easements or licenses to (i) Developers for construction of Improvements within the Project, which construction easements shall expire upon completion of the construction of such Improvements; (ii) adjoining property owners for construction of improvements within adjacent property, which construction easements shall expire upon completion of the construction of such improvements; and (iii) adjoining property owners in perpetuity in connection with the correction or adjustment of a boundary between the Common Area and one or more Lots and such adjacent property.
- **5.11** Revegetation Easement. There is hereby created an affirmative, non-exclusive easement in favor of the Declarant and the Association, and their contractors and employees, to go upon any Lot, Parcel, or Areas of Association Responsibility to plant or seed, and to provide temporary Maintenance for, indigenous vegetation (which may include, but shall not be limited to, cacti, paloverde, mesquite, ironwood, sage and other trees, bushes, shrubbery and grasses) on any areas of a Lot, Parcel, or Areas of Association Responsibility in order to (a) replant areas that prior to the date thereof were parts of roadways that have been abandoned or are otherwise not in use, or that were cleared, or partially cleared, of vegetation in the past, or (b) maintain the aesthetic integrity of the Project and to provide temporary water to such vegetation at the expense of the party causing such revegetation or restoration to be performed, or at the expense of the Owner, pursuant to Section 8.3 or Section 8.4 if the area was cleared by the Owner, Lessee, Resident, invitee, guest, contractor, or other authorized Person of such Owner either in violation of the Declaration or the Design Guidelines.

# ARTICLE 6 THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

- 6.1 Formation of Association. The Association shall be a nonprofit Arizona corporation. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Arizona law and all powers necessary or desirable to perform the Association's duties and obligations and to exercise the rights and powers of the Association set forth in the Community Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration with respect to the operation and Maintenance of the Areas of Association Responsibility.
- 6.2 <u>Board of Directors and Officers</u>. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with

the Articles and the Bylaws. The initial directors and officers of the Association shall be designated in the Articles, and such persons shall serve until their death, resignation or removal from office. Until the termination of the Declarant Control Period, the Declarant shall have the right to appoint and remove the members of the Board. After the termination of the Declarant Control Period, the Board shall be elected by the members as provided in the Bylaws. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

- 6.3 The Association Rules. The Board may adopt, amend and repeal Association Rules pertaining to: (a) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility (if any); (b) minimum standards for the Maintenance of Lots; or (c) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.
- Personal Liability. No director or officer of the Association, no member of the Design Review Committee or of any committee of the Association, and no other person acting on behalf of the Board whether past or present (the "Indemnified Parties") shall be personally liable to any Member, or to any other Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such person's duties and responsibilities under the Community Documents provided such person acted in good faith. The Association shall indemnify and hold harmless the Indemnified Parties against all contractual liability to others arising out of contracts made on behalf of the Association unless such contract has been made in bad faith. The Association shall indemnify each Indemnified Party against expenses and liabilities, including reasonable attorneys' fees, incurred or imposed upon him or her in connection with any proceeding in which he or she may be a party, or in which he or she may become involved, by reason of such person being a director, officer, employee, committee member, or other Person acting on behalf of the Association, except in such cases where such Indemnified Party is adjudged guilty by a court of law of gross negligence or malfeasance in the performance of his or her duties. Indemnification shall be in addition to and not exclusive of all other rights to which such Indemnified Party may be entitled.
- Association expressly by the Community Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Community Documents or reasonably necessary to effectuate any such right or privilege, including without limitation, the right to employ a Managing Agent or other independent contractor to perform all of the duties and responsibilities of the Association and the Board, subject to the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project.
- 6.6 <u>Identity of Members</u>. The members of the Association shall be any Person who is an Owner of a Lot or Parcel within the Property. All Owners shall be mandatory members of the Association. An Owner of a Lot or Parcel shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such

time as such ownership ceases for any reason, at which time such membership in the Association shall automatically cease.

- 6.7 <u>Classes of Members and Voting Rights</u>. The Association shall have the following two classes of voting membership:
  - <u>Class A.</u> Class A members are all Owners of Lots (including Developers), with the exception of the Declarant until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, the Declarant shall be a Class A member.
  - <u>Class B.</u> The Class B member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership at such time as the Declarant no longer owns any Lot or Parcel in the Project. The Declarant may at any time relinquish its Class B membership by giving written notice thereof to the Association.
- 6.8 <u>Voting Procedures</u>. No change in the ownership of a Lot or Parcel shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot or Parcel must be cast as a unit, and fractional votes shall not be allowed. If a Lot or Parcel is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot or Parcel, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot or Parcel unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.
- 6.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot or Parcel, and then only to the transferee of ownership to the Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership appurtenant to said Lot or Parcel to the new Owner thereof. Each Purchaser of a Lot or Parcel shall notify the Association of its purchase within ten (10) days after becoming the Owner of a Lot or Parcel.
- 6.10 Conveyance, Lease or Encumbrance of Common Area. The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper Maintenance and operation of the Property. In addition, the Association may convey portions of the Common Areas to make adjustments in the boundary lines between the Common Areas and adjoining Lots

or public rights-of-way. Except as expressly permitted by this Section and in Section 6.12 below, the Common Area shall not be mortgaged or conveyed without the prior written consent or affirmative vote of the Declarant and the total affirmative vote or written consent of the Owners holding at least two-thirds (2/3) of the votes in the Association.

- 6.11 <u>Suspension of Voting Rights</u>. If any Owner fails to pay any Assessments or other amounts due to the Association under the Community Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Community Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board, in accordance with the procedures set forth in the Bylaws, shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Community Documents are corrected.
- 6.12 <u>Association Contracts</u>. The Board, acting on behalf of the Associations, shall have the right, power and authority to enter into one or more bulk service agreements with service providers for such duration, at such rate(s) and on such other terms and conditions as the Board deems appropriate, including cable and satellite television and communications services, utility services, pest control, and monitoring or security services, as may be in the best interests of the Project. At the election of the Board, the cost of any such service agreements shall be a Common Expense and included within the budget for the Annual Assessment. In addition, the Board, on behalf of the Association, shall have the right to grant utility easements in favor of municipal or state agencies.
- Change of Use of Common Areas. Upon (a) adoption of a resolution by the Board stating that the then present use of a designated part of the Common Areas or the Association's interest in the Common Areas is no longer in the best interest of the Owners, Lessees, and Residents, or no longer necessary or appropriate for the purposes intended, in the Board's opinion, and (b) the approval of the resolution by a majority of all of the Members (except the Declarant) and also by the Declarant (so long as the Declarant owns any Lot or a Parcel, or portion thereof), the Board shall have the power and right to sell, exchange, convey or abandon such Common Area or interest or change the use thereof (and in connection therewith, construct, reconstruct, alter, or change the Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided the new use and (i) shall be for the benefit of the Owners, Lessees, and Residents, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Areas. If the Board determines and the Board's resolution recites that any transaction involving the disposition or exchange of Common Area or the interest of the Association in Common Area will not have an adverse effect on the Association and the Owners, Lessees, and Residents of the Property, the Board may, in lieu of holding a meeting of Members pursuant to (b) above, give notice to all Owners of the proposed transaction and of their right to object to it and thereafter culminate the proposed transaction without a meeting of the Members if no more than ten percent (10%) of the Members object in writing within thirty (30) days after notice is given.
- 6.14 Mergers, Consolidations and Federations. The Association shall have the right and power to participate in mergers, consolidations and federations with any other non-profit corporation or association regardless of whether the objects, purposes, rights and powers of such

non-profit corporations or associations are less than, the same as, or greater than those of the Association. Any proposed merger, consolidation or federation shall not be effective or voted upon by the Owners without the prior approval of the Board. Any such mergers, consolidations, or federations shall be consummated only upon an affirmative vote of two-thirds (2/3) of all of the Members (except Declarant) in the Association, and also by Declarant (so long as Declarant owns any Lot or a Parcel, or portion thereof). Upon any such merger or consolidation, all of the properties, rights, and obligations of the other non-profit corporation or association shall be transferred to and assumed by the Association as the survivor, or alternatively, all of the properties, rights, and obligations of the Association shall be transferred to and assumed by the surviving or newly created non-profit corporation or association.

# ARTICLE 7 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

### 7.1 Creation of Lien and Personal Obligation of Assessments.

- 7.1.1 Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs (including but not limited to fees for demand letters, lien fees and reasonable attorneys' fees) incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. During the Declarant Control Period, no Regular Assessment or Special Assessment shall be levied against any Lot owned by the Declarant. Parcels shall not be subject to Assessment until subdivided and a Plat for such Parcel, or a portion thereof, is Recorded, and then only and to the extent of the Lots shown on such Plat.
- 7.1.2 Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.
- 7.1.3 No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Design Review Committee to take some action or perform some function required of it.
- 7.1.4 Except as provided otherwise in this Declaration regarding Lots and Parcels owned by the Declarant, all Lots within the Plat shall be subject to assessment upon the conveyance of the first Lot in such Plat to a Purchaser.

### 7.2 Regular Assessments.

- 7.2.1 At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments and the amount to be generated through Assessments against the Lots. Based on the budget adopted by the Board, the Board shall assess against each Assessable Lot a Regular Assessment. The Regular Assessment shall be the same for each Assessable Lot. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by Arizona law.
- 7.2.2 The Board shall give notice of the Regular Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Regular Assessment established by the Board nor relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and a Regular Assessment is levied by the Board for such Assessment Period, the amount of the Regular Assessment for the immediately preceding Assessment Period shall remain in effect. Unless approval or ratification of the budget or the Regular Assessment for any Assessment Period is required by law, neither the budget nor the Regular Assessment shall be required to be ratified or approved by the Members.
- 7.2.3 If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, the Board may amend the budget and increase the Regular Assessment for that Assessment Period and the revised Regular Assessment shall commence on the date designated by the Board.
- 7.3 Special Assessments. The Association may levy against each Assessable Lot a Special Assessment for the purpose of obtaining funds to pay the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area (including fixtures and personal property related thereto), or to pay unbudgeted expenses or expenses in excess of the amount budgeted. Any Special Assessment must be approved by two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. So long as the Declarant owns any Lot which is being marketed for sale, or a Parcel, or portion thereof, any Special Assessment must be approved in writing by the Declarant. Any Special Assessment shall be levied in an equal amount for each Assessable Lot.
- 7.4 Assessment Period. The period for which the Regular Assessment is to be levied shall be the calendar year ("Assessment Period"), except that the first Assessment Period shall commence on the first day of the first month following conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

- Obligation of Declarant for Deficiencies. During the Declarant Control Period, in lieu of paying Regular Assessments, the Declarant shall pay and contribute to the Association such funds as may be necessary, when added to the Regular Assessment levied by the Association on the Class A Members, to pay all Common Expenses of the Association as they become due. The Board may require the payment of such funds by the Declarant from time to time as the Board deems necessary by giving written notice thereof to the Declarant, however, the Declarant shall not be required to make such payments more often than monthly. Each such notice shall state the total amount of funds required and the calculation of the pro rata share of such funds to be paid by the Declarant. In no event shall the Declarant be obligated to pay or contribute money to the Association in excess of the amount of Regular Assessments that would have been payable by the Declarant if the Lots owned by the Declarant had been assessed as Assessable Lots. Amounts paid direct by the Declarant or Developers to the Association's creditors, or assets purchased by the Declarant or Developers for the Association, or amounts paid for services rendered by the Declarant, Developers, or their affiliates for the benefit of the Association that otherwise would have been an expense of the Association, shall apply against the obligations of the Declarant to pay all or a portion of such Association deficiency. Any deficiency to be paid by the Declarant under this Section may be in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any deficiency made by the Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed.
- Regular Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt Association Rules setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

# 7.7 Effect of Nonpayment of Assessments; Remedies of the Association.

- 7.7.1 Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.
- 7.7.2 The Association shall have a lien on each Lot for: (a) all Assessments levied against the Lot; (b) all interest, lien fees, fees for demand letters, late charges and other

fees and charges assessed against the Lot or payable by the Owner of the Lot; (c) unless otherwise prohibited by applicable law, all fines levied against the Owner of the Lot; (d) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association; (e) any amounts payable to the Association pursuant to Section 8.3 or Section 8.4; and (f) any other amounts payable to the Association pursuant to the Community Documents.

- 7.7.3 The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.
- 7.7.4 The Assessment Lien shall have priority over all liens or claims except for: (a) liens and encumbrances recorded before the Recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges against the Lot; and (c) any Recorded First Mortgage on a Lot. Any First Mortgage or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.
- 7.7.5 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines (if permitted by applicable law), reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.
- 7.7.6 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien or (b)

bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

- 7.8 Purposes for which Association's Funds May Be Used. The Association may use the 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 purpose of: (a) discharging and performing the Association's duties and obligations under the Community Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Community Documents or applicable law; (c) providing or promoting activities and services the Board deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Project and the Owners, Lessees and Residents; (d) contracting for services (including, without limitation, trash collection or cable television) to be provided to Owners, Lessees and Residents; and (e) taking such other action as the Board deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Project.
- 7.9 <u>Surplus Funds</u>. 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 Regular 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.
- 7.10 Initial Capital Contribution. To assist the Association in establishing adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot, a sum equal to one-sixth (1/6th) of the then current Regular Assessment for an Assessable Lot (the "Working Capital Fee"). Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Community Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this Section shall be deemed a contribution to the capital of the Association. When there is no longer a Class B membership, the Board shall have the right, by an affirmative vote of the majority of the members of the Board, and based upon the Board's analysis of replacement and repair reserves, to permanently or temporarily reduce or increase the amount of the Working Capital Fee or cease assessing the Working Capital Fee, and having ceased to assess the Working Capital Fee, the Board shall have the right to reinstate assessment of such fee at any time thereafter, it being the intent that the Board shall have the right to begin or cease assessment of the Working Capital Fee as the Board deems appropriate from time to time. The Working Capital Fee shall not apply to a Developer, but shall apply to the each subsequent Purchaser.
- 7.11 <u>Transfer Fee.</u> In addition to the Working Capital Fee referred to in <u>Section 7.10</u>, and in addition to any fees charged by the Association pursuant to <u>Section 7.2</u>, each Purchaser

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 to compensate the Association for the administrative cost resulting from the transfer of a Lot. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail to deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806C. The Association may assign the transfer fee to the managing agent of the Association and direct that the transfer fee be paid by the Purchaser to the managing agent.

### 7.12 Contribution to Reserves.

7.12.1 Except as otherwise provided in this Section, each Purchaser of a Lot shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.13. The amount of the initial Reserve Contribution shall be set by the Board of Directors prior to the conveyance of the first Lot to a Purchaser. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve (12) month period without the approval of Members holding more than fifty percent (50%) of the total votes in the Association. The Reserve Contribution shall be deemed a contribution to the capital of the Association.

7.12.2. No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership 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 transfer or conveyance was to avoid payment of the Reserve Contribution; (d) the transfer or conveyance of a Lot as a result of a trustee's sale under a deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. 33-741, et seq.; or (e) a conveyance to a Developer.

7.13 Reserves. The Board shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Areas of the Association Responsibility. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 7.12 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Unless the Association is exempt from Federal or State taxes, all reserves shall be accounted for as contributions to the capital of the Association and segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association. Funds in the Reserve Account may only be used to pay costs and expenses related to the periodic maintenance, repair and replacement of the Areas of Association Responsibility, unless the expenditure of any or all of the funds in the Reserve Account for other purposes is approved by

the vote of Owners holding at least two-thirds (2/3) of the votes in the Association. To assist the Board in determining the appropriate amount of reserves, the Board shall obtain a reserve study at least once every three years (or update any prior reserve study), which study shall at a minimum include (a) identification of the major components of the Project which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

7.14 Pledge of Assessment Rights as Security. The Association shall have the power to pledge the right to exercise its assessment powers and rights provided for in the Declaration as security; provided, however, that any such pledge shall require the prior affirmative vote or written assent of a majority of all of the Members (except Declarant), and also by the Declarant (so long as the Declarant owns any Lot which is being marketed for sale, or a Parcel, or portion thereof).

# ARTICLE 8 MAINTENANCE

### 8.1 Areas of Association Responsibility.

- 8.1.1 The Association shall be responsible for the management and Maintenance of the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate Maintenance of all Areas of Association Responsibility, but the Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon. By acceptance of a deed for a Lot within the Project, or by acquiring any interest in any of the Property subject to this Declaration, each Owner and the Association shall be deemed to have agreed that when the Declarant transfers ownership of the Common Areas to the Association, the Common Areas shall be owned and accepted subject to reasonable wear and tear and there shall be no obligation of the Declarant, or its successors, to repair, replace, or otherwise cause the Areas of Association Responsibility to be placed in like-new condition.
- 8.2 <u>Lot Owner's Responsibility</u>. Each Owner of a Lot shall be responsible for the Maintenance of the Lot, and all buildings, Residences, landscaping or other Improvements situated thereon, except for any portion of the Lot, or any Improvement situated thereon, which is an Area of Association Responsibility. All buildings, Residences, landscaping and other

Improvements shall at all times be kept in good condition and repair. To the extent not an Area of Association Responsibility as set forth in <u>Section 8.1</u> above, all grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. No yard equipment, wood piles or storage areas may be maintained so as to be Visible from Neighboring Property or streets. All Lots upon which no Residences, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

- 8.3 Assessment of Certain Costs of Maintenance and Repair. If the need for Maintenance of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, its family, tenants, guests or invitees, the cost of such Maintenance shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.
- 8.4 Improper Maintenance and Use of Lots. In the event (a) any portion of any Lot or Parcel 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, (b) any portion of a Lot or Parcel is being used in a manner which violates this Declaration, or (c) the Owner of any Lot or Parcel is failing to perform any of its obligations under the Community Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen (15) day 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 paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

#### 8.5 Walls.

8.5.1 The term "Boundary Wall" means a wall or fence which is located astride or abutting the boundary line between two adjoining Lots. To the extent not inconsistent with this section, the general rules of law regarding Boundary Walls shall apply to any Boundary Walls, if any, constructed within the Project; provided, however no Boundary Wall shall be constructed without the prior approval of the Design Review Committee. The Owners of contiguous Lots who share a boundary wall shall both equally have the right to use such Boundary Wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. Except as otherwise provided in this Section, the Owners of contiguous Lots who share a Boundary Wall shall each pay one-half (1/2) of the cost of any maintenance, repair or replacement of the Boundary Wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the Boundary Wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (1/2) of such cost. Notwithstanding the foregoing, if any Boundary Wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, or due to root growth from trees or other vegetation on an Owner's Lot or from irrigation or overspray from sprinklers from an Owner's Lot, it shall be the obligation of such Owner to rebuild and repair the Boundary Wall without cost to the other Owner or Owners who share the boundary

wall. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Boundary Wall shall first obtain the written consent of the adjoining Owners. To the extent necessary for an Owner to construct Improvements on his Lot, an Owner may remove all or part of a Boundary Wall, provided the Owner gives reasonable notice to the adjoining Owners and Residents that all or part of the Boundary Wall will be removed and the Owner desiring to temporarily remove a portion of the Boundary Wall makes appropriate arrangements (including the erection of a temporary fence or barrier) or pays appropriate compensation for the protection of children and pets on the adjoining Lot. Any Owner removing all or part of a Boundary Wall pursuant to this Section 8.5.1 shall rebuild and restore the Boundary Wall to its prior condition at such Owner's sole cost and expense within a reasonable time after entry through the Boundary Wall is no longer necessary in connection with the construction of Improvements.

- 8.5.2 The Declarant hereby reserves to itself and its successors and assigns a perpetual, non-exclusive easement over, under, upon and across the Lots for the purpose of repairing or relocating a Boundary Wall without the consent of the Owners who share the use of the Boundary Wall.
- 8.5.3 Walls, other than Boundary Walls, shall be Maintained and replaced by the Owner of the Lot on which such wall is located, except that any wall constructed by Declarant, Developers, or the Association which is placed on or near the boundary line between a Lot and (i) the Areas of Association Responsibility, or (ii) the perimeter of the Project, or (iii) an adjacent right-of-way, shall be maintained, repaired and replaced by the Association. In the event any such wall encroaches upon the Common Area or a Lot, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be. Any wall which is placed on the boundary line between a Lot and public right-of-way shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and replacement of the surface of the wall which faces the public right-of-way.
- 8.5.4 If any wall as originally constructed by Declarant or a Developer encroaches upon a Lot by not more than one (1) foot, a valid easement for such encroachment and for the Maintenance of such wall shall and does exist in favor of the Association and/or the Owner of the Lot(s) which share such Boundary Wall.

# ARTICLE 9 INSURANCE

- 9.1 <u>Scope of Coverage</u>. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:
  - (a) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000 for any single occurrence. Such insurance shall cover all occurrences

commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or Maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner.

- (b) Property insurance on all Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy, including "Agreed Amount" and "Inflation Guard" endorsements. Unless a higher maximum amount is required by Arizona law, the maximum deductible amount for policies covering Areas of Association Responsibility shall be the lesser of \$10,000 or one percent (1%) of the policy face amount.
- (c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.
- (d) To the extent available at a reasonable cost, liability insurance for directors, officers and committee members of the Association in an amount determined by the Board, but not less than \$1,000,000.
- (e) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners.
- The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of its authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) 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; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

(g) If the Project is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy covering the Areas of Association Responsibility and any Improvements thereon in the lesser of one hundred percent (100%) of the insurable value of the Improvements and any other property covered on the required form of policy or the maximum limit of coverage available under the National Flood Insurance Administration program. Unless a higher deductible amount is required by Arizona law, the maximum deductible amount for such policy covering the Areas of Association Responsibility is the lesser of \$10,000 or one percent (1%) of the policy's face amount.

The premiums for any insurance obtained by the Association pursuant to this Section shall be included in the budget of the Association and shall be paid by the Association.

- 9.2 <u>Certificates of Insurance</u>. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.
- 9.3 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.
- 9.4 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Areas which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either be retained by the Association as an additional capital reserve or otherwise dealt with in the discretion of the Board.
- 9.5 Waiver by Members. All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the Owners and the First Mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, other Owners, the Declarant, Developers, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by

negligence of or breach of any agreement by said persons, but only to the extent of insurance proceeds received in compensation for such loss.

9.6 Owner's Responsibility. Neither the Declarant nor the Association, or any member, director, officer, shareholder, employee, or agent thereof, shall be liable to any Owner or Resident or any other Person if any risk or hazard is not covered by insurance or the amount thereof is inadequate. Without limiting the foregoing, each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense insuring his Lot and the Improvements thereon against loss and providing personal liability coverage. The Association insurance shall not cover these items. In addition, if an Owner's Lot is within a designated Flood Hazard Zone, then it is the responsibility of such Owner to obtain and maintain appropriate flood insurance. Premiums for all insurance obtained by the Association pursuant to this Article and all deductibles thereunder shall be Common Expenses and shall be paid for by the Association; provided, however, the Association may assess to an Owner any deductible amount expended as a result of the negligence, misuse or neglect for which such Owner is legally responsible under this Declaration and Arizona law. The Board of Directors may select deductibles in reasonable amounts applicable to the insurance coverage maintained by the Association.

# ARTICLE 10 DISPUTE RESOLUTION

- 10.1 <u>Defined Terms</u>. As used in this <u>Article 10</u>, the following terms shall have the meanings set forth below:
  - (a) "Alleged Defect" means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Areas or any Lot by a Declarant Party including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.
  - (b) "Declarant Party" means: (i) the Declarant and Developers and their members, managers, officers and employees; (ii) the entity which platted the Project if different from but affiliated with Declarant; (iii) the general contractor for the Project infrastructure and all residential and Common Area Improvements of the Project; (iv) the subcontractors, material suppliers, labor suppliers, architects, engineers and consultants of any of the said contractors, including but not limited to their respective members, managers, directors, officers, partners, employees, agents and independent contractors; or (v) any employee or other representative of the Declarant who serves as a director or officer of the Association.
  - (c) "Claim" means: (i) any claim or cause of action by a Claimant against a Declarant Party arising out of or related in any way to an Alleged Defect, including, without limitation, any claim or cause of action for breach of express or implied warranties, negligence or that a Declarant Party was negligent in the planning, design, engineering, grading, construction or development of the Project; or (ii) any claim or cause of action against a Declarant Party arising out of or in any way related to the

development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

- Agreement to Resolve Certain Disputes Without Litigation. The Association, all Owners and all Declarant Parties agree that it is in the best interests of the Association, the Owners and the Declarant Parties to encourage the amicable resolution of Claims and to resolve Claims without the emotional and financial costs of litigation. Therefore, the Association, all Owners and all Declarant Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 10.
- Notice of Alleged Defect. The Association or any Owner who becomes aware of any Alleged Defect which could be the basis for a Claim against any Declarant Party shall give written notice (the "Notice of Alleged Defect") promptly to each Declarant Party who could be responsible for the Alleged Defect. The Notice of Alleged Defect shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Owner giving the Notice of Alleged Defect first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any persons or property. Following the receipt by a Declarant Party of a Notice of Alleged Defect, the Declarant Party and any of its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to the Association or Owner giving the Notice of Alleged Defect to enter onto or into, as applicable, the Common Areas or any Lot for the purposes of inspecting and/or conducting testing to determine the existence, nature and extent of the Alleged Defect and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Nothing set forth in this Section 10.3 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated under applicable law or any warranty provided by the Declarant or any other Declarant Party. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace under this Section shall be irrevocable and may not be waived or otherwise terminated, except by written document, in recordable form, executed and recorded by the Declarant Party. In no event shall any statute of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of the Alleged Defect. If the Alleged Defect is not repaired or replaced to the satisfaction of the Association or Owner giving the Notice of Alleged Defect within sixty (60) days after the Notice of Alleged Defect is given to the Declarant Party, then the Association or Owner may proceed with the preparation of the delivery of a Notice of Claim as provided in Section 10.4.
- 10.4 Notice of Claim. The Association or any Owner who contends or alleges to have a Claim (a "Claimant") against any Declarant Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to

delivering a Claim Notice to a Declarant Party or initiating any legal action, cause of action, proceeding, or arbitration against any Declarant Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Declarant Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Declarant Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

- attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, 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. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.
- 10.6 <u>Binding Arbitration</u>. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this <u>Section 10.6</u>. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. The Association, the Owners and all Declarant Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by

arbitration conducted in accordance with this <u>Section 10.6</u>. The Association, the Owners and all Declarant Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Declarant Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this <u>Section 10.6</u>, the arbitration shall be conducted in accordance with the following rules:

- (a) <u>Initiation of Arbitration.</u> The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules or such other rules as the AAA may determine to be applicable (the "AAA Rules").
- (b) <u>Governing Procedures</u>. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, <u>et seq</u>. In the event of a conflict between the AAA Rules and this <u>Section 10.6</u>, the provisions of this <u>Section 10.6</u> shall govern.
- (c) <u>Appointment of Arbitrator</u>. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this <u>Section 10.6</u> as the "Arbitrator".
- (d) <u>Qualifications of Arbitrator</u>. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.
- (e) <u>Disclosure</u>. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in <u>Subsection 10.6(c)</u>.
- (f) <u>Compensation</u>. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.
- (g) <u>Preliminary Hearing</u>. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be

addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

- (h) <u>Management of the Arbitration</u>. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.
- (i) <u>Confidentiality</u>. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.
- (j) <u>Hearings</u>. Hearings may be held at any place within Maricopa County, Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.
- (k) Final Award. The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.
- 10.7 Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Declarant Party of a Claim Notice with respect to an Alleged Defect, the Declarant Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Areas and any Lot for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions as it shall deem

reasonable and necessary under the circumstances. Nothing set forth in this Section 10.7 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Declarant Party. In no event shall any statutes of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

- 10.8 <u>Use of Funds</u>. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Claimant receiving the judgment, award or settlement is the Association, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.
- Claim Notice to any Declarant Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Members entitled to cast more than eighty percent (80%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. If the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of their Lot of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.4.
- 10.10 <u>Statute of Limitations</u>. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under <u>Section 10.6</u>. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Clam, the Claim shall forever be barred.
- 10.11 Federal Arbitration Act. Because many of the materials and products incorporated into the Project are manufactured in other states, the development and conveyance of the Lots evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et. seq.) now in effect or as it may be hereafter amended, will govern the interpretation and enforcement of the arbitration provisions of this Declaration.
- 10.12 <u>Conflicts</u>. In the event of any conflict between this <u>Article 10</u> and any other provision of the Project Documents, this <u>Article 10</u> shall control. In the event of any conflict between the provisions of this <u>Article 10</u> and the terms of any express warranty provided to a Purchaser by a Declarant or a Developer or any third party home warranty company in connection with the purchase of a Residence from a Declarant or a Developer which requires mediation or arbitration of claims under the warranty, the provisions of the express warranty shall control; provided, however, that if the Claim is being asserted by the Association, the

approval of the members of the Association required by <u>Section 10.9</u> must be obtained prior to the Association demanding arbitration of the Claim or filing any legal action with respect to the Claim.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR PERSONAL REPRESENTATIVES, SUCCESSORS. HEIRS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS ARTICLE 10 (INCLUDING THE PROVISIONS FOR MEDIATION OR ARBITRATION UNDER ANY THIRD PARTY HOME WARRANTY PROGRAM ISSUED IN CONNECTION WITH THE SALE OF A RESIDENCE BY DECLARANT OR ANY DEVELOPER), AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 10. THE ASSOCIATION, EACH OWNER, DECLARANT AND EACH DEVELOPER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 10, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER, DECLARANT AND EACH DEVELOPER FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT IT IS GIVING UP ANY RIGHTS IT MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

IF AN OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY DECLARANT PARTY 9INCLUDING ANY DEVELOPER) INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 10 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE MARICOPA COUNTY SUPERIOR COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

IN THE EVENT THE ARBITRATION PROVISIONS OF THIS ARTICLE 10 ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER IN THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVES AND COVENANTS NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE

RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY DEVELOPER, ANY OWNER, THE ASSOCIATION OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

# ARTICLE 11 GENERAL PROVISIONS

### 11.1 Enforcement.

- 11.1.1 The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to:
  - (a) imposing reasonable monetary fines after notice and an opportunity to be heard is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident of the Owner's Lot or by any guest or invitee of the Owner or any Lessee or Resident;
    - (b) suspending an Owner's right to vote;
  - (c) suspending any Person's right to use any recreational facilities within the Common Area (if any); provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;
  - (d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than fifteen (15) days delinquent in paying any assessment or other charge owed to the Association;
  - (e) exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;
  - (f) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
  - (g) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the Design Guidelines from continuing or performing any further activities in the Project;
  - (h) towing vehicles which are parked in violation of this Declaration or the Association Rules;

- (i) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled; and
- Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community Documents; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner, Lessee, or Resident to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.
- 11.1.2 The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.
- 11.1.3 Any Owner shall also have the right to enforce this Declaration in any manner available at law or in equity. All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. If the enforcement of the Community Documents by the Association or a Lot Owner involves a Claim (as defined in Section 10.1), then the provisions of Article 10 shall apply, and in the event of any conflict or inconsistency between Article 10 and this Section, Article 10 shall prevail.
- 11.2 <u>Duration</u>; <u>Termination</u>. This Declaration, as it may be amended pursuant to <u>Section 11.3</u>, shall run with the land and bind the Property and be in full force and effect in perpetuity unless terminated as provided in this Section. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Members holding ninety percent (90%) or more of the votes in the

Association; provided, however, The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration with respect to the operation and Maintenance of the Areas of Association Responsibility. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Following the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. So long as the Declarant or Developers own one or more Lots which are being marketed for sale, or a Parcel, or any portion thereof, no termination of this Declaration shall be effective unless approved in writing by the Declarant.

### 11.3 Amendments.

- 11.3.1 Except as provided for in Sections 4.11.1, 4.11.3 and 4.11.4 as to amendments requiring the written consent of the owners of the North Adjoining Lots, this Declaration may be amended at any time by the affirmative vote of Owners of not less than twothirds (2/3) of the votes entitled to be cast by the Members of the Association. So long as the Declarant or Developers own one or more Lots which are being marketed for sale, or a Parcel, or portion thereof, any amendment to this Declaration must be approved in writing by the Declarant. Notwithstanding anything to the contrary herein, no amendment to this Declaration which modifies or deletes any portion of Article 10 of this Declaration which has an effect on the Declarant, in its sole judgment, or a Developer, in its sole judgment, shall be made unless the Declarant, whether or not the Declarant still owns property within the Project, and all Developers, whether or not such Developers currently own property within the Project, approves of such amendment in a Recorded document. So long as the Declarant or Developers own one or more Lots which are being marketed for sale, or a Parcel, or portion thereof, the Declarant may unilaterally amend this Declaration without Owner approval to comply with the requirements or guidelines of the United States Department of Veterans Affairs, the United States Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.
- 11.3.2 Any amendment approved by the Owners shall be signed by the President or Vice President of the Association and shall be Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.
- 11.3.3 Any challenge to an amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment or any such challenge shall be deemed waived and to have lapsed.
- 11.4 <u>Condemnation of Common Area</u>. If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the

Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Members holding at least eighty percent (80%) of the votes in the Association instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Members holding more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds shall be retained by the Association and used for such purposes as may be determined by the Board.

- 11.5 <u>Interpretation</u>. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Design Guidelines, the Bylaws shall control.
- 11.6 <u>Severability</u>. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.
- 11.7 <u>Change of Circumstances</u>. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.
- 11.8 Laws, Ordinances and Regulations. The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Declarant, the Board or the Design Review Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations. Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.
- 11.9 <u>References to this Declaration in Deeds</u>. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be

binding upon the grantee-Owner or other person claiming through any instrument and its heirs, executors, administrators, successors and assignees.

- 11.10 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.
- 11.11 <u>Captions and Titles</u>. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof. Unless otherwise specified, all references in this Declaration to Articles or Sections refer to Articles and Section of this Declaration.
- 11.12 <u>Rule Against Perpetuities</u>. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

# ARTICLE 12 PROPERTY DISCLOSURES AND OWNER ACKNOWLEDGEMENTS

By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Owner shall be deemed to have acknowledged, agreed to, and accepted the following for itself and its respective Lessees, Residents, guests and Invitees.

#### 12.1 Adjacent Uses.

- 12.1.1 Owners of the land adjacent to the Project may seek to rezone their property, seek zoning variances for their property, or may modify their site plans within existing zoning. Consequently, no assurance can be given that the zoning or uses for the adjacent lands will not change from time to time.
- 12.1.2 Development and construction in and around the Project will have an impact on the surrounding environment. The degree of impact will depend on the location, size, planning and extent of development. Construction can result in noise, dust and dangerous conditions at the construction site. Changes in plant and animal life, air and water quality, noise and light levels may affect the use and enjoyment of a Lot or Common Area.

#### 12.2 Disclosures and Owner Acknowledgements.

- 12.2.1 The Project from time to time may, but need not necessarily, experience problems with scorpions, bees, ants, spiders, termites, pigeons, snakes, rats, and/or other insects or pests (collectively, "Pests"). Declarant, Developers, and the Association hereby specifically disclaim any and all representations or warranties, express and implied, with regard to or pertaining to any Pests, and each Owner must make its own independent determination regarding the existence or non-existence of any Pests which may be associated with their Lot.
- 12.2.2 No representation or warranty is made by the Declarant, Developers, or the Association, or any of their respective directors, officers, agents, or employees, with respect to the presence or continued existence of any view or scene from any portion of a Lot or the Project. The particular view, if any, which a Lot, Common Area or the Project currently enjoys may be impaired or obstructed by the construction of other Improvements or facilities within or outside of the Project.
- 12.3 <u>Notice to Purchasers of Proximity to the Scottsdale Airport</u>. Each Lot in the Project is in the Airport Influence Area identified in Chapter 5 of the Scottsdale Revised Code. This provision of the Declaration constitutes notice to each Owner acquiring a Lot that, as of the date of acquiring the Lot as to the following:

The Lot is close to the Scottsdale Airport (the "Airport"), located generally between Frank Lloyd Wright Boulevard on the north, Pima Road on the east, Thunderbird Road on the south and Scottsdale Road on the west.

The Airport is operated as a general aviation reliever/commercial service airport for Scottsdale and North Phoenix, and used generally for airplanes, jets and helicopters.

Aircraft using the Airport may fly over the Lot and adjacent properties at altitudes that vary for several reasons, including weather conditions, aircraft type, aircraft performance and pilot proficiency.

The majority of takeoffs and landings occur between 6:00 a.m. and 11:00 p.m., but the Airport is open 24 hours each day, so takeoffs and landings may occur at any time.

The number of takeoffs and landings at the Airport average approximately 400 each day, but that number varies and may increase.

Aircraft using the Airport will generate noise, the volume, pitch, amount and frequency of which will vary for several reasons, including weather conditions, aircraft type, aircraft altitude and aircraft number.

Airport management attempts to minimize aircraft noise and its influence on Lots in the Airport Influence Zone, but there is no guarantee that such attempts will be effective or remain in place.

The Owner accepts and assumes any and all risks, burdens and inconvenience caused by or associated with the Airport and its operations (including noise), and agrees not to assert or make any claim arising out of the Airport and its operations against the City of Scottsdale, its elected and appointed officials, officers, directors, commissioners, representatives, employees, and agents.

Any questions regarding the operation of the Airport can be directed to the Airport Administration office at 480-312-2321

12.4 Owner's Assumption of Risks. All Owners, Lessees, and Residents, and their guests and Invitees, assume all risks of bodily injury, death and property damage arising from the uses, operations, conditions, and activities described above in this Article. Neither the Declarant, Developers, nor the Association, or their respective directors, officers, agents, or employees, shall be liable for any loss, damage, liability, claim or devaluation of property related to, arising out of, or resulting from anything disclosed in this Article.

SIGNATURES ARE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the undersigned the Declarants have executed this Declaration as of the day and year first above written.

EMPIRE RESIDENTIAL COMMUNITIES FUND II, LLC, a Delaware limited liability company

a Dela	aware miniculatinity company
	By: ERC Management, LLC, an Arizona limited liability company, Manager
	By:
	By: Richard Felker, its authorized agent
	IRE RESIDENTIAL COMMUNITIES FUND III, LLC, aware limited liability company
	By: ERC Management, LLC, an Arizona limited liability company, Manager
	By:
	By: Richard Felker, its authorized agent
State of Arizona ) ) ss. County of Maricopa )	
Richard Felker, the authorized age company, Manager of EMPIRE RI	was acknowledged before me this day of, 201_, by ent of ERC Management, LLC, an Arizona limited liability ESIDENTIAL COMMUNITIES FUND II, LLC, a Delaware IPIRE RESIDENTIAL COMMUNITIES FUND III, LLC, a, on behalf of each such entity.
	Notary Public
My Commission Expires:	

# **EXHIBIT A**

### LEGAL DESCRIPTION

Lots 1-\_\_ and Tracts A-\_ of Wolf Springs Ranch, the subdivision plat of which is recorded at Book \_\_\_\_ of Maps, Page\_\_, records of Maricopa County, Arizona.

#### WOLF SPRINGS

#### PROPERTY DESCRIPTION

That portion of the Southwest quarter of the Southeast quarter of Section 18, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows;

COMMENCING at the Southeast corner of said Section 18, from which the South quarter corner of said Section 18, bears North 89° 59′ 08″ West (basis of bearing) a distance of 2641.61 feet;

Thence North 89° 59′ 08″ West along the South line of said Section 18, a distance of 1321.02 feet, to the Southeast corner of the Southwest quarter of said Southeast quarter, Section 18;

Thence North 00° 02′ 09" West along the East line of said Southwest quarter, a distance of 40.00 feet to the POINT OF BEGINNING;

Thence North 89° 59′ 08″ West along a line 40 feet North of and parallel to said South line a distance of 30.00 feet;

Thence North 00° 02' 09" West a distance of 19.32 feet;

Thence South 44° 08′ 53″ West a distance of 19.95 feet to a point lying 45.00 feet North of said South line;

Thence North 89° 59′ 08″ West along a line 45.00 feet North of and parallel to said South line a distance of 98.64 feet;

Thence North 00° 02′ 09″ West a distance of 5.00 feet to a point lying 50.00 feet North of said South line;

Thence North 89° 59′ 08″ West along a line 50.00 feet North of and parallel to said South line a distance of 162.54 feet;

Thence North 00° 02′ 09″ West a distance of 8.00 feet to a point lying 58.00 feet North of said South line;

Thence North 89° 59′ 08″ West along a line 58.00 feet North of and parallel to said South line a distance of 293.11 feet;

Thence North 45° 00′ 44″ West a distance of 16.96 feet to a point on the East right of way line of 93 <sup>rd</sup> Street;

Thence North 00° 02′ 09″ West along said East right of way line a distance of 1250.82 feet, to a point on the North line of the South half of the Southwest quarter of the Southeast quarter of said Section 18;

Thence South 89° 59′ 16″ East along said North line a distance of 404.18 feet;

Thence South 00° 02′ 09" East a distance of 25.00 feet to a point South of said North line;

Thence South 89° 59′ 16″ East along a line 25.00 feet South of and parallel to said North line, a distance of 176.00 feet to appoint on the West right of way line of 94<sup>th</sup> Street;

Thence South 00° 02′ 09" East along said West right of way line a distance of 965.64 feet;

Thence South 89° 59′ 08″ East a distance of 30.00 feet to a point on said East line of said Southwest quarter;

Thence South 00° 02′ 09" East along said East line a distance of 290.19 feet to the POINT OF BEGINNING.

Said described parcel contains 739,562 square feet or 16.98 acres more or less.

This overall description was derived from the combined parcels described in Commitment for Title Insurance, by Security Title Agency, Inc., File No. 15170669-015-JBA, dated September 18, 2017.