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AMENDED AND RESTATED

DECLARATION OF COVENANTS,

CONDITIONS, RESTRICTIONS, AND EASEMENTS

FOR

THE UPLANDS AT LAMBERT LANE

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AMENDED AND RESTATED

DECLARATION OF COVENANTS,

CONDITIONS, RESTRICTIONS, AND EASEMENTS

FOR THE UPLANDS AT LAMBERT LANE

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS is dated for reference as June 5, 2013, and is made and executed by Scotia JV 2005, L.L.P., an Arizona limited liability partnership, hereinafter the "Declarant."

RECITALS

A. Declarant is the Owner of more than two-thirds of the platted lots within that certain real property in the Town of Oro Valley, County of Pima, State of Arizona, which is more particularly described as:

> THE UPLANDS AT LAMBERT LANE, Lots 1 through 16 and Common Areas "A" (private streets) and Common Areas "B" (open spaces) as recorded in Book 59, Page 77, Pima County Records, Pima County, Arizona (the "Plat")

Lots 1 through 16 and Common Areas "A" and "B" shall hereinafter be referred to as the "Covered Property," and shall be subject to the terms and provisions hereof.

B. The Covered Property shall be legally known as The Uplands at Lambert Lane, and Declarant desires to see that it be developed as a planned community.

C. Declarant's predecessors caused to be recorded that certain Declaration of Covenants, Conditions, Restrictions and Easements for The Uplands at Lambert Lane, recorded Sequence Number 2005-0990026, Pima County Records (the "Original Declaration") and that certain Certificate of First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for the Uplands at Lambert Lane, recorded Sequence Number 2006-0410901, Pima County Records (the "First Amendment") pertaining to the Covered Property.

D. Declarant, having the right to do so by law and by the express terms of the Original Declaration, does hereby declare that this Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for The Uplands at Lambert Lane (hereinafter, the "Declaration"), shall amend and restate the Original Declaration and First Amendment in their entirety, and shall completely supersede and replace the Original Declaration and First Amendment.

E. Declarant proposes to construct improvements upon the Covered Property, and to sell and convey the same, subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens hereafter set forth, each of which is for the benefit of the Covered Property and the subsequent owners thereof.

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

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

ARTICLE I

DEFINITIONS

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

1.1 ***"Agency" or "Agencies"***	Shall mean any of the Federal Housing Administration (FHA), Veterans Administration (VA), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), and any other governmental agency or financial institution insuring or guaranteeing residential loans, or purchasing such loans on the secondary market.
1.2 ***"Annexable Property"***	Shall mean any or all real property near or adjacent to the Covered Property, and which may be annexed pursuant to the provisions hereof.
1.3 ***"Annual Assessments"***	Shall mean the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.
1.4 ***"Architectural and Landscape Review Committee" or "ARC"***	Shall mean the committee(s) formed pursuant to ARTICLE IV of this Declaration, or the Declarant in the absence of a formal committee.
1.5 ***"Architectural and Landscape Review Guidelines" or "ARC Guidelines"***	Shall mean the rules and regulations adopted, amended and supplemented by the Declarant and Architectural and Landscape Review Committee pursuant to Section 4.2 of this Declaration.

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

1.7 *"Assessments"* Shall mean all Annual Assessments, Maintenance Assessments and Special Assessments, and shall include any late charges secured by the Assessment Lien.

1.8 *"Assessment Lien"* Shall mean the charge and continuing servitude and lien against a Lot for payment of Assessments as described in Section 8.1 of this Declaration.

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

1.10 *"Association"* Shall mean " The Uplands at Lambert Lane Homeowners Association," an Arizona nonprofit corporation, its successors and assigns.

1.11 *"Association Rules"* Shall mean the rules and regulations adopted by the Association pursuant to Section 6.3 of this Declaration.

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

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

1.14 *"Common Area"* Shall mean all real property and the improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled or operated by the Association within the Covered Property (including, but not limited to, areas used for landscaping, flood control, drainage, bicycle or jogging paths, active and passive recreational areas, open space, walkways and pedestrian and vehicular ingress and egress, including any private gates), or with respect to which the Association has undertaken administrative, maintenance or other similar responsibilities. Areas inside of the Lots are not Common Area, except for any easement areas for which the Association has in a separate writing accepted responsibility for maintenance, and even then only to the extent of such acceptance.

1.15 *"Common Expenses"* Shall mean the expenses incurred or to be incurred by the Association, as estimated by the Board, for the benefit of the Members and Owners within the Covered Property,

generally, including reasonable reserves, and which are, in the sole and absolute discretion of the Board, determined to be properly chargeable by Assessments to all Owners and Members, as opposed to being allocated solely to certain Lots.

1.16 *"City"* Shall mean the Town of Oro Valley.

1.17 *"Covered Property"* Shall mean Lots 1 through 16 and Common Areas "A" (private streets) and Common Areas "B" (open spaces) of the subdivision of Pima County known as The Uplands at Lambert Lane, as described above, and such portions of the Annexable Property as may be annexed pursuant to the provisions hereof by recordation of a Declaration of Annexation, all subject to the further provisions hereof, including those dealing with withdrawal of land.

1.18 *"Declarant"* Shall mean Scotia JV 2005, L.L.P., an Arizona limited liability partnership and any Declarant Affiliate or assignee of the rights and duties granted or reserved to Declarant herein, which assignment may be in whole or in part.

1.19 *"Declarant Affiliate"* Shall mean any Person owning any portion of the Covered Property and directly or indirectly controlling, controlled by or under common control with the Declarant or, if a trust, the Beneficiary of Declarant, and shall include without limitation, any general or limited partnership, limited liability company, corporation or trust in which the Declarant or the Beneficiary of Declarant (or another Declarant Affiliate) is a general partner, managing member, controlling shareholder, or beneficiary.

1.20 *"Declarant Control Period"* Shall mean the earlier of:

(a) the period of time expiring one hundred twenty (120) days after all Lots within the Covered Property have been conveyed to persons other than Declarant or a Declarant Affiliate;

(b) such date as Declarant in writing relinquishes its rights which may be exercised during the Declarant Control Period; or

(c) December 31, 2053.

The Declarant Control Period, if once expired pursuant to sub-part (i) above shall revive if, because of

subsequent annexations or other events, Declarant owns any Lot within the Covered Property.

1.21 ***"Declaration of Annexation"*** Shall mean a declaration executed by Declarant and declaring that any portion of the Annexable Property is made subject to this Declaration and annexed under the purview hereof and made a portion of the Covered Property.

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

1.23 ***"Delinquent Amount"*** Shall mean any Assessment, or installment thereof, or any other sum due hereunder and not paid when due.

1.24 ***"Developer"*** Shall mean Scotia JV 2005, L.L.P., an Arizona limited liability partnership, and its successors and assigns, and any assignment of Developer's rights hereunder may be in whole or in part. Developer may in all cases enjoy the rights of the Declarant.

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

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

1.27 ***"First Mortgage"*** Shall mean any mortgage or deed of trust on any Lot with the first priority over any other mortgage or deed of trust encumbering such Lot.

1.28 ***"First Mortgagee"*** Shall mean the holder of any First Mortgage.

1.29 ***"Governing Documents"*** Shall mean this Declaration, the Articles of Incorporation and Bylaws of the Association, the Architectural and Landscape Review Guidelines and the Association Rules, as same may from time to time be amended.

1.30 ***"Government Property"*** Shall mean all land and improvements owned by or dedicated to a public or governmental agency or authority for so long as the public or governmental agency or authority is the owner or beneficiary thereof, except for land or improvements, or both, owned and/or operated by

a public or governmental agency or authority acting in a proprietary capacity.

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

1.32 ***"Lot"*** Shall mean an area of real property designated as a numbered "Lot" on any recorded subdivision plat, beginning first with Lots 1 through 16.

1.33 ***"Maintenance Assessments"*** Shall mean the Assessments, if any, levied by the Board pursuant to Section 8.6 of this Declaration.

1.34 ***"Member"*** Shall mean any Owner or Person entitled to Membership, including Declarant for so long as Declarant owns a single Lot.

1.35 ***"Membership"*** Shall mean the rights and duties of Owners, including Declarant so long as Declarant is a Member, with respect to the Association.

1.36 ***"Occupant"*** Shall mean any Person, other than an Owner, occupying a Lot, or any portion thereof or building or structure thereon, as a Resident, Tenant, licensee or otherwise, other than on a merely transient basis.

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

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

1.39 ***"Plat"*** Shall mean a recorded subdivision plat for the Covered Property, and any amendment or resubdivision thereof,

and in the event of successive plats for portions of the Covered Property, the term shall include all such plats unless the context clearly indicates otherwise.

1.40 *"Resident"* Shall mean:

each Owner who resides on the Covered Property and the members of the immediate family of each Owner who reside on the Covered Property;

each Tenant who resides on the Covered Property and the members of the immediate family of each Tenant who reside on the Covered property;

such other persons residing on a Lot, including without limitation, guests of an Owner or Tenant.

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

1.42 *"Special Assessments"* Shall mean the assessments, if any, levied by the Board pursuant to Section 8.8 of this Declaration.

1.43 *"Tenant"* Shall mean a Person occupying any part of the Covered Property under any type of rental agreement, whether such rental agreement is within the definition set forth in A.R.S. §33-1310(11) or otherwise.

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

ARTICLE II

PROPERTY AND PERSONS BOUND BY THIS DECLARATION

2.1 *General Declaration* Declarant desires to facilitate development of the Covered Property in accordance with this Declaration which establishes a general plan of development for the planned community legally known as The Uplands at Lambert Lane. This Declaration provides for the overall development, administration, maintenance and preservation of the Covered Property.

In accordance with the foregoing, as portions of the Covered Property are developed, Declarant, without obligation, may establish such additional covenants, conditions and restrictions as may be appropriate for the respective portions of the Covered Property. Nothing in this Declaration shall be construed to prevent or limit Declarant's right to modify the development of the Covered Property, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot or Common Area.

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

ARTICLE III

EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREA

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

Right to Modify and Change

(a) The rights, duties and obligations of the Association, and the reserved right of Declarant, and of the Association, to modify the use of Common Area, or to convey same free of claims or rights of the Owners or Members;

Suspension of Rights

(b) The right of the Association, after such notice and hearing as may be required by law, to suspend the voting rights and the rights to use and enjoyment of any recreational components of the Common Area of any Owner or occupant, as the case may be, for any period during which an Assessment remains delinquent, or for a period not to exceed 60 days for any single infraction of this Declaration, the Association Rules, or the ARC Guidelines (provided such suspension shall not be limited if the infraction remains uncured);

Limitation of Guests

(c) The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Area, other than the private streets; and

Regulation, Mortgages and Conveyances; Power of Association

(d) The right of the Association to regulate use of the Common Area in accordance with this Declaration, and, in addition to Declarant's reserved rights, to mortgage or convey portions of Common Area with the affirmative vote or written consent, with or without a meeting, of Declarant and Owners representing at least two-thirds (2/3rds) of the total votes held by the Members.

Broad Reserved Powers of Declarant

Notwithstanding the foregoing, the Association may at any time convey, and the Declarant may cause the Association to convey, minor, insignificant, or immaterial portions of Common Area (such as those caused by encroachment areas, boundary line discrepancies, survey errors and other such matters), and portions of Common Area determined by Declarant to be more burdensome or costly to own than the concomitant benefit to the Association would warrant, and such conveyance may be made without the consent or vote of any other Person or Member, should Declarant or the Board determine that such conveyance or transfer is in the best interests of the Association or Covered Property. Furthermore, Declarant may at any time resubdivide Common Area into Lots or other Common Area or dedicated land, and may cause the Board or Association to execute such instruments as may be necessary to cause such resubdivision or dedication, and no consent or approval shall be required of any other

Members nor shall a meeting of Members be required.

Any sale, disposition or resubdivision of the Common Area shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof.

In addition, the Association shall in all cases have the right to grant easements and to convey and dedicate lands and interests therein for such purposes as public roads, streets, drainageways, culverts, and sewer facilities, and such action shall not require the approval of any Owners or Members of the Association.

Easements

The Covered Property is subject to certain easements and restrictions as stated on the Plat or otherwise. All Owners must comply with the easements on the Plat. A certain site visibility easement and a certain private drainage easement have been granted to the Association, both of which impact Lots 12 and 16. A certain 4-foot non-motorized public access easement runs across the southern portion of Common Area B located on the western portion of the Covered Property, and such access easement shall be limited to non-motorized traffic across Common Area B and shall not be construed to permit loitering, camping or staying on the access easement beyond what is reasonable necessary to pass through Common Area B.

3.2 *Delegation of Use*

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

3.3 *Waiver of Use*

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

claims against any sum owned to the Association.

3.4 *Acceptance of Certain Common Area and Other Areas*

Declarant shall have the absolute right to require that the Association accept title to future Common Area, open spaces and facilities whether or not shown upon any Plat for the Covered Property. Such right of Declarant shall, without limitation, extend to all areas of the Annexable Property that Declarant determines are appropriate for Common Area designation or otherwise appropriate for Association control and maintenance.

ARTICLE IV

ARCHITECTURAL AND LANDSCAPING RESTRICTIONS AND CONTROL

4.1 *Control By Declarant of All Architectural and Landscaping Matters*

Reserved Rights of Declarant

Each and every Owner, and all other Persons, by accepting a deed or otherwise having ownership, possession or control over any Lot agrees that Declarant, as the initial entity planning for the development of the Covered Property, and as an initial Owner of all or portions of the Covered Property, has a vital and legitimate interest in seeing the Covered Property developed in a manner consistent with Declarant's wishes and plans, as those plans may from time to time change.

Approval Required

In accordance with the foregoing, and as more specifically set forth below, no development, construction, grading, Improvement, landscaping or other work or alteration of any land shall be commenced unless and until Declarant has given its prior written approval of same, which approval may be granted or denied in the sole and absolute discretion of Declarant. Declarant intends to and shall in writing, as more specifically set forth below, delegate certain or all of its rights of review and approval to the ARC, which shall be a committee of the Board, though Declarant may retain certain rights of review and approval and may also delegate certain of its rights of review and approval to others. Declarant shall have full rights and authority to cause the Association to take such action and to expend Association funds and resources in pursuit thereof, it being acknowledged that the Association and Members are or shall be benefited by such enforcement or other action.

ARC and ARC Guidelines

Declarant, the ARC, and any other committee or designee shall be guided in their review and approval functions by the Architectural and Landscape Review Guidelines (the "ARC Guidelines"), if any, as the same may from time to time be adopted or amended.

4.2 *Architectural and Landscape Review Guidelines*

Content of Guidelines

The initial ARC Guidelines, to the extent adopted, may be adopted by Declarant or by the ARC with the written approval of Declarant and the Board. Subject to the written approval of the contents thereof by Declarant for so long as Declarant owns any portion of the Covered Property, and thereafter subject to the written approval of the Board, the ARC may adopt, amend, and supplement the ARC Guidelines, which may be different for various portions of the Covered Property. Neither Declarant nor Developer shall be required to adhere to any style or design of architecture, nor any particular appearance or building façade, and may from time to time change the styles and designs it adopts. The right of Declarant to approve the ARC Guidelines is paramount to the right of the Board or of the ARC, and no amendment may be made without Declarant's consent as long as Declarant owns any portion of the Covered Property. The ARC Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for review and the standards for development within all or various portions of the Covered Property. The ARC Guidelines may include, without limitation, provisions regarding:

(a) the size or maximum Lot coverage for Single Family Dwelling Units;

(b) architectural design of Improvements and Dwelling Units, with particular regard to the harmony of the design with surrounding structures and topography;

(c) placement of buildings;

(d) landscaping design, content and conformity with the natural desert character of the Covered Property;

(e) requirements concerning exterior color schemes, exterior finishes, and materials, and requirements concerning those yard and building ornaments, recreational equipment, exterior lighting and exterior furniture, and other items or improvements that are Visible From Neighboring Property;

(f) signage and mailboxes; and

(g) perimeter and screen wall design and appearance.

(h) accessibility to the community, including whether the community is gated or unrestricted

Adoption and Force and Effect of Rules and ARC Guidelines

The ARC Guidelines shall have the same force and effect as the Association Rules.

Broad Discretion

In reviewing plans for alterations, modifications, additions or other changes to a Dwelling Unit, improvement or structure upon a Lot, the Declarant or ARC (herein, generically, the "ARC") shall exercise its discretion in deciding whether or not an alteration or modification is in harmony with the overall scheme of subdivision development. The ARC shall have the right to deny alterations or modifications for purely aesthetic reasons if the ARC considers the alteration or modification to be unattractive in relation to the overall scheme of development, or if the ARC considers the alteration or modification to be a nuisance or upset of design, or if the ARC considers the alterations or modifications to be in contrast to or out of harmony with the style of existing structures, or if the physical views of the Covered Property will be disrupted by the alteration or modification. The ARC may elicit the opinion of other Owners, including the neighbors of the Owner submitting the plan for alteration or modification, as to the conformity and harmony of the proposed plan with the overall scheme of development, and the effect that the proposed plan might have on the physical views of other Owners. After eliciting these opinions, the ARC may, but need not, take them into account in making its final decision of approval or disapproval of an alteration or modification to an existing structure. While the opinion of no single Lot Owner will control a decision of the ARC, the ARC may, within its own discretion, but need not, attach whatever significance it deems sufficient to the statements of residents or neighbors of the Owner submitting the proposed alteration or modifications to an existing structure.

The ARC shall have the right, but not the duty, to adopt ARC Guidelines, with the approval of Declarant during the Declarant Control Period, or the Board thereafter, and to perform any other duties delegated to it,

and to carry out all other duties imposed upon it by this Declaration. The ARC Guidelines may be informal rules, standards and guidelines, and in the absence of separate written guidelines, the ARC Guidelines shall be deemed to be those standards, styles, materials, and plans adopted by Declarant in the construction of Dwelling Units in the Covered Property, subject to change at Declarant's discretion. The goal of the ARC is to assure that Improvements harmonize with the existing surroundings and structures, except to the extent that the ARC Guidelines may change over time, including at Declarant's initiative should styles and designs of Improvements change, or be changed by Declarant, from those initially enforced. In the absence of revised ARC Guidelines approved by Declarant during the Declarant Control Period, no Owner other than Declarant may implement revised color schemes or changes to the original building structure of a Dwelling Unit, nor to composition or products, unless approved in writing by Declarant.

Any ARC Guidelines to be adopted must, so long as Declarant owns any Lot, be approved by Declarant. Subject to the written approval of the contents thereof by the Declarant during the Declarant Control Period, and thereafter subject to the written approval of the Board, the ARC may adopt, amend, and supplement the ARC Guidelines.

4.3 *Power and Duties Upon Assignment to ARC*

Declarant or its agents or representatives may act as the ARC and perform all of its functions until Declarant determines to relinquish such authority and to appoint a formal committee. Whether by Declarant or by an appointed committee, it shall be the duty of the ARC to consider and act upon all proposals or plans submitted pursuant to the provisions hereof. An act of Declarant or its agents or representatives shall be deemed the act of the ARC if acting in such capacity.

4.4 *Obligation to Obtain Approval*

Mandatory Submittal

Except as otherwise expressly provided in this Declaration, without the prior written approval of Declarant or the ARC, as applicable, of plans and specifications prepared and submitted to such committee in accordance with the provisions of this Declaration and the ARC Guidelines:

(a) No improvements, alterations, repairs, excavation, grading, landscaping or other work shall be

done which in any way alters the exterior appearance of any property or improvements thereon from their natural or improved state; and

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

Landscaping

No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by Declarant or the ARC in accordance with the ARC Guidelines, and except for replacements of plants previously approved and which remain acceptable in accordance with the then current ARC Guidelines.

Changes and Deviations

No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by Declarant or the ARC, shall be permitted without approval of the change or deviation by Declarant or by the ARC, as applicable.

Verbal Statements

In no event shall Declarant or the ARC be bound by any verbal statements, no single member thereof having the right to bind the committee.

4.5 ***Organization of Architectural and Landscape Review Committee***

The ARC shall be deemed a committee of the Board. All members of the ARC, and all persons acting on its behalf shall be appointed and removed solely by Declarant so long as Declarant owns a single Lot in the Covered Property, unless such rights are in writing waived by Declarant. Thereafter, the right of appointment shall rest with the Board. A member shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent or employee of Declarant.

4.6 ***Waiver and Variance***

The ARC may grant variances and waivers from the requirements of the ARC Guidelines if it believes it is in the best interests of the Covered Property to do so, or if hardship justifies the variance. In addition, Declarant may at any time grant a variance or waiver. The approval by Declarant or the ARC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval, shall not be deemed to constitute a waiver of any right to withhold approval of any

similar plan, drawing, specification or matter subsequently submitted for approval. So long as Declarant owns any portion of the Covered Property, any waiver shall require the written approval of Declarant.

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

4.7 *Liability*

Neither Declarant nor the ARC (nor any member thereof) shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

(a) the approval or disapproval of any plans, drawings or specifications, whether or not defective;

(b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

(c) the development of any Lot; or

(d) the execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct, provided, however, that with respect to the liability of a member of the ARC, such member has acted in good faith on the basis of such information as may be possessed by him.

Without in any way limiting the generality of any of the foregoing provisions of this Section, Declarant or the ARC, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner (other than the Owner applying for consent or approval, whose views Declarant or the ARC shall be required to hear) with respect to any plans, drawings, specifications, or any other proposal submitted for review.

4.8 *Appeal to Board*

Any Owner who initially made application to the ARC, and who is aggrieved by a decision of the ARC, may appeal the decision to the Board in accordance with procedures to be established in the ARC Guidelines. In the event the decision of the ARC is overruled by the Board on any issue or question, the prior decision of the ARC shall be deemed modified to the extent specified by the Board. There shall be no appeal from a decision of Declarant, and

no appeal from a decision of the ARC may be taken so long as Declarant has the right to appoint the members of the ARC pursuant to the Bylaws or this Declaration.

4.9 *Fees*

Power to Assess

Declarant, the ARC, or whomever else may be vested with authority to review plans, applications and submittals in accordance herewith, may establish a reasonable processing fee to defer the costs of considering any requests for approvals submitted, or for appeals to the Board, which fee shall be paid at the time the request for approval or review is properly submitted.

Refundable and Non-Refundable Fees and Deposits

In addition, to the extent permitted by law, Declarant or the ARC may implement: (i) refundable and non-refundable fees and deposits for revegetation and restoration of any site, with a portion of a fee being non-refundable should an Owner default in its obligations to restore or revegetate a site when required hereunder, or should the Association or the ARC incur cost as a result thereof; (ii) refundable and non-refundable fees to assure that all damage or degradation to Common Area, streets and roads caused or to be caused by construction traffic is promptly repaired or otherwise addressed by the Owner responsible therefor, or to enable the Association to accomplish such work, itself, or to establish a fund for future restoration of such areas; and (iii) such deposits as may be appropriate to assure completion of components of any work that may interrupt or interfere with the use of Common Area or operations of the Association.

4.10 *Inspection*

Declarant and any member or authorized consultant of the ARC, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot after reasonable notice to the Owner of such Lot in order to inspect the improvements constructed or being constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with the ARC Guidelines or this Declaration.

ARTICLE V

PERMITTED USES AND RESTRICTIONS

5.1 *Covenants, Conditions, Restrictions, and Easements Governing Use*

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots:

Prohibited Uses

The following uses are prohibited:

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

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

Plat Notes

In addition to the restrictions contained herein, the Covered Property shall be subject to all applicable easements, restrictions and limitations set forth on the Plat, and all Owners shall comply therewith.

Duty of Maintenance

Each Owner shall, at such Owner's sole cost and expense, except as otherwise provided herein, keep such Owner's Lot, including buildings, Improvements, private drives, easement areas and grounds thereon, in a well-maintained, clean, weed-free, trash-free, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements. Each Owner shall be solely responsible for all maintenance and repair of his or her improvements, including the Dwelling Unit, and including all walls and the roof of each Dwelling Unit. Owner shall replace any dead plant materials within ninety (90) days and shall maintain the irrigation system for said areas in proper working order. Each Owner shall be responsible for the maintenance and repair of all utility lines located within such Owner's Lot, including any special alternative waste disposal systems, evapotranspiration beds, and other facilities, and such

maintenance obligation shall include maintenance and repair beyond the Lot boundary to the point of service line connection or junction in the adjacent street, Common Area or easement area; except that the Association shall accept responsibility and liability for the construction, maintenance, operation and control of the private drainage-ways, common areas, and all private sewers within the Covered Property.

No Improvement on any Lot shall be permitted to fall into disrepair and each such building and Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the Improvement. In the event any building or Improvement is damaged or destroyed, then, subject to approval in accordance with Article 4, such building or Improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs within the time limits established by the Board, the Board and its agents and representatives are empowered to enter on the Lot and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments. Any such entry shall be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

The Association shall have the right, but not the obligation, to maintain front yard landscaping if approved by Declarant or by the Board. The Association shall have an easement onto each Lot for purposes of the foregoing matters of maintenance and repair. If such maintenance is undertaken, the Declarant or the Association may at any time determine to cease such maintenance in which case all obligation shall rest with each Owner of each Lot, as applicable.

With respect to such front yard landscape maintenance, the Association's responsibility, if it should undertake same, shall be limited to plants and irrigation equipment relating thereto installed by the Developer or the Declarant, and with respect to the irrigation of vegetation, only for so long as such irrigation is necessary. Water for such vegetation, and any damage from irrigation systems serving the same, and electricity required therefor

or for any lighting, shall be the sole responsibility of the Owner whose Lot is affected or benefited thereby as determined in the sole discretion of the Board. An easement on, in and over such portions of each Lot, and rights to connect to water and electric sources, and to place any fixtures and equipment, for such purposes is hereby granted and conveyed to the Association by this Declaration. No Lot Owner shall disconnect or otherwise preclude or interfere with electric connections or the delivery of water to their Lot or to any adjacent Lot or Common Area.

Revegetation and Restoration Easement

There are hereby created nonexclusive easements in favor of Declarant and the Association and their contractors and employees, but without obligation (a) to go upon any Lot which contains areas that prior to the date hereof were parts of roadways or paths that have been abandoned or are otherwise not in use, or that were cleared or partially cleared of vegetation in the past for some other reason, to grade, shape, level or fill said areas or portions thereof to restore them to a more natural appearing terrain, and to remove such earth or bring in such fill as Declarant or the Association deems appropriate to accomplish said restoration; and (b) to go upon any Lot to plant or seed, and to provide temporary maintenance for indigenous vegetation of Declarant's choice on any areas of the Lot in order to (i) replant areas that prior to the date hereof were parts of roadways or paths that have been abandoned or are otherwise not in use, or that were cleared or partially cleared of vegetation in the past for some other reason, or (ii) maintain the aesthetic integrity of the Lots; and to provide temporary water to such vegetation at the expense of the Association or at the expense of the Owner, as a Maintenance Assessment or fine, if the area was cleared by the Owner or occupant of such Owner's Lot, invitee, guest, contractor, or other authorized visitor of either in violation of this Declaration or the ARC Guidelines.

Building Exteriors

All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved in accordance with Article 4.

On Site Grading and Drainage

No water shall be drained or discharged from any Lot, or building thereon, except in accordance with this Declaration, applicable County ordinances and approvals

of Declarant or the ARC.

Utility Lines and Connections

All utility wires, lines, pipes, conduits, facilities, connections and installations (including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer or septic systems) shall be installed and maintained underground or concealed in, under, or on structures approved in writing in advance by Declarant or the ARC, as applicable. All transformers shall be placed on or below the surface of the Lot. Temporary above-ground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of Declarant or the ARC.

Notwithstanding the above, the following permitted uses may be installed and maintained above ground:

(a) Existing utility installations, for so long as Declarant shall approve; and

(b) Any future relocation of existing utility installations, for so long as Declarant shall approve.

No other utility or service equipment or lines may be installed or relocated on any Lot or the Common Area except as approved by Declarant or the ARC.

Overhead Encroachment

No tree, shrub or planting of any kind shall be allowed by an Owner to overhang or encroach from the Owner's Lot upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of eight (8) feet, without the prior written approval of Declarant or the ARC. The Association shall have the right to cause an Owner to trim any offending tree, shrub or planting.

Permissible Encroachment

Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by Developer or Declarant may from time to time encroach in minor degree upon the Common Area or other Lots in the Covered Property. Such encroachments caused incidentally and which are minor in scope and degree, such as those caused by good faith survey error, and where removal of improvements would cause gross economic waste, shall

be deemed acceptable. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments is deemed conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built and such Owner shall have a right in perpetuity to maintain such encroachment.

Restriction on Further Subdivision, Property Restrictions and Rezoning

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

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

Nothing in the previous paragraphs shall apply to portions of the Covered Property owned by Declarant or to subdivision plats submitted or proposed by Declarant and pertaining to portions of the Covered Property owned by Declarant. Declarant may at any time, of its own volition, and with no other consent or approval required, resubdivide all or any portion of the Lots or Common Area

Declarant may at any time in writing relinquish all or a portion of its approval rights under this Section. After Declarant no longer is a Member of the Association, or after Declarant may have relinquished its rights under this Section, the Board shall succeed to the right to approve of subdivision plats, unless Declarant has assigned such right to one or more Persons, in which case the Board shall succeed to such rights only after such Persons no longer own any portion of the Covered Property.

Maintenance of Landscaping and Driveways

Each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

(a) on the Owner's Lot (including set back areas);

(b) portions of the Common Area adjacent to an Owner's Lot and which are on the Lot's side of any wall erected on the Common Area; and,

(c) public right-of-way area between sidewalks and the street curb on the Owner's Lot, or other public or easement areas adjacent to the Owner's Lot, except that in the event the maintenance of such areas is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

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

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

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

Any Owner who fails to properly maintain the landscaping upon the Lot shall be given a reasonable

period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot after receiving notice from the Board to do so, and after such hearing and notice as may be required by law, the Association is empowered to enter upon the Lot, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as Maintenance Assessments.

Requirements Pertaining to Drainage, Retention and Detention

The Association shall operate, maintain, repair and replace any drainage and retention/detention facilities, including the detention basin, installed within the Common Areas or within such drainage easements for the Association shown on the Plat for which the Association in writing has accepted responsibility. The Association will develop a maintenance schedule for the care and maintenance of any such detention basin.

The Association shall have a perpetual easement for drainage as shown upon the Plat for the Covered Property extending from the Common Area onto Lots 12 and 16 and the Association is hereby granted and reserved an easement over and across such Lots for such purpose.

The Association shall at no time be dissolved while Common Area, open spaces or drainage areas remain the responsibility of the Association by state or local law, or by enforceable written agreement.

Nuisances, Dust Control and Construction Activities

No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Each Lot shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Association may, but is not required, to

take action to abate what any Owner may consider a nuisance.

General Parking and Street Parking Regulations, etc.

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

(a) No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Streets, except that the Board may adopt rules and regulations governing the subject matter or further restricting such parking or establishing limited exceptions thereto, such as for loading and unloading, emergencies, and the like.

(b) Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area. No Motor Vehicles designed or used for carrying merchandise, supplies or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents, or except as permitted by the ARC Guidelines.

(c) It is also the intent of this Section to require that Motor Vehicles owned or leased by an Owner, Lessee or Resident of the Lot be parked only in a garage, driveway or approved driveway expansion areas situated on the Lot, as constructed by the Developer in the course of original construction approved by the Declarant or the ARC. Accordingly, Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in a garage situated on the Lot to the extent space is available in the garage, and no less than two stalls in all garages shall be kept free of obstruction and available for parking of Motor Vehicles. If space is not available in the garage,

then Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot. Parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may only be parked on an approved driveway expansion area if space for the parking of such Motor Vehicles is not available in the garage or in the driveway constructed as part of the initial construction or Improvements on the Lot. The parking of a Motor Vehicle owned or leased by and Owner, Lessee or Resident of a Lot on a driveway expansion area is also subject to such rules and regulations as may be adopted by the Board.

Vehicle Storage

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or, in the case of visits, parties, or special events, on the Streets or in designated parking spaces on the Common Area.

Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, occupant or Resident may be parked in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board, but may not otherwise be parked or stored in the Covered Property except in an enclosed garage or in a rear yard obscured by a wall of sufficient height as established in the sole discretion of the ARC.

No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property, and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property, nor stored or parked on the Streets or any other part of the Common Area. Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or repaired on the Streets or any other part of the Common Area.

The Board shall have the right and power to adopt rules and regulations governing or further restricting the

parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section, and establishing certain exceptions that may in certain cases be warranted, at the discretion of the Board. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board, the provisions of this Section shall control.

This Section shall not prohibit the parking of vehicles protected by A.R.S. § 33-1809, nor shall this Section prohibit parking in streets for special functions such as parties, weddings or other functions when temporary visitor parking is not available on individual Lots.

Use of Garages

No garage doors shall be permitted to remain open except for a temporary purpose (such as during ingress or egress, or when the garage is physically occupied by an Owner or Occupant therein).

Commercial Vehicles

No Motor Vehicle shall be parked on the Covered Property if the exterior of the vehicle contains or exhibits any signage relating to a commercial enterprise or commercial activity that is visible from the exterior of such vehicle (and the Motor Vehicle is not kept in an approved enclosed garage), except such signage that is limited to the exterior driver or passenger door of such Motor Vehicle shall be permitted if the Motor Vehicle is used by the Owner as regular transportation in commuting to work.

No Motor Vehicle shall be permitted to park on a Lot, even if such vehicle otherwise qualifies under the preceding paragraph, or other provisions hereof, if such vehicle is used for a commercial enterprise or activity and such Motor Vehicle has ladders, work beds, lights and/or other commercial items attached to or hanging from such vehicle so as to be visible from the exterior of such Motor Vehicle (and the Motor Vehicle is not kept in an approved enclosed garage).

The foregoing restriction shall not apply to Motor Vehicles parked within an enclosed structure approved by the Declarant or the ARC, as applicable, nor to commercial vehicles of contractors and others working on the Covered Property, nor to vehicles of vendors, business invitees and others in the process of temporarily serving the Covered Property, nor to vehicle parking protected by

law as provided herein.

Temporary Occupancy and Temporary Buildings; Outside Storage

No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the construction process, a temporary building or structure may be erected, installed or maintained on a Lot with the prior written approval of the Declarant or the ARC, including the approval of the structure's location and appearance. Such temporary structures shall be removed immediately after completion of such construction, and that portion of the Lot from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article 4. Any permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of improvements on any Lot, necessary construction materials and supplies may be stored on the Lot without the need for a solid visual barrier providing such materials and supplies are kept in neat order considering the construction activities. Declarant and the ARC are authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

Health and Welfare

In the event uses of, activities on, or facilities upon a Lot are deemed by the Board to be a nuisance or to adversely affect the health or welfare of Owners or Occupants, Declarant, the Board or the ARC may make rules restricting or regulating their presence.

Incidental Uses

The Board may approve, regulate and restrict incidental uses of property. By way of example and not of limitation, the Board may adopt Rules governing tennis courts and/or swimming pools and facilities, and other recreational facilities.

Antennas and Dishes; Solar Devices

No television, radio, or other electronic towers, aerials, antennas, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall

hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not Visible From Neighboring Property, or integrated with the Residence and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

No solar heating or cooling equipment or other visible solar device may be installed or erected without approval of Declarant or the ARC, as applicable, which shall give due regard to state law restricting the limitation of such devices.

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

Mineral Exploration, Wells and Disclosure, etc. No Lot shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, except in each case as Declarant shall specifically approve.

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

Window Treatments No visible window covering or reflective covering may be placed, or permitted to remain, on or adjacent to

the exterior of any window of any building, structure or other improvement without the prior written approval of the ARC. Without limiting the foregoing, any window covering visible from any street or sidewalk shall be a neutral color.

Lot Coverage

The percentage of each Lot which may be covered by buildings (as well as the location of such buildings and other improvements on each Lot) shall be subject to the review and approval of Declarant or the ARC, as applicable, as part of the review of plans for proposed improvements on such Lot pursuant to this Declaration, but shall in no event violate County ordinances and regulations in effect from time to time. This Section shall not apply to Declarant's Lots.

Party Walls

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

(a) Each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof.

(b) If a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests or family, the Owner or Occupant as the case may be, shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided in Subsection (d) below.

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

(d) In the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to Declarant or the ARC, as applicable, whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final. No appeal shall be

taken from a decision of Declarant.

(e) Notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (a) between Common Area and Lots; or, (b) situated on Common Area within or adjacent to a Lot, the Owners and Occupants of such Lots shall be responsible, at their expense, for all maintenance, repair, painting and replacement thereof.

Single Family Use

No structure whatsoever, other than one private, Single Family residence per Lot, together with such private garage, guest facilities, recreational and storage facilities, approved in advance by Declarant or the ARC in accordance with this Declaration, shall be erected, placed or permitted on any Lot, and no use may be made other than a Single Family use.

Commercial Restriction

No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any Lot except as set forth in this subparagraph. An Owner or Occupant may carry on a "Home Occupation" as provided below. A "Home Occupation" as permitted hereby means work within the Dwelling Unit (such as the performance of accounting work, creation of art work, etc.) provided that:

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

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

(c) the business activity does not involve traffic by persons who do not reside therein, nor regular arrival of employees of the Owner; and

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

Should the Board determine that the Home Occupation violates the provisions hereof, the Board shall have the authority to require that the Home Occupation in question cease immediately. In no event shall any form of

detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, be permitted within the Covered Property, except that this prohibition shall not apply to group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.

Leasing

The entire (but not less than all) of a Dwelling Unit may be leased to a Single Family Tenant from time to time by the Owner, subject to the provisions of this Declaration and the Association Rules. Each Owner shall, to the extent permitted by law, provide to the Association a copy of any written lease agreement for any Lot or such information concerning any such lease as is deemed important to the Association, and Tenants shall be required in each form of lease to abide by all provisions of this Declaration. Should a tenant fail to so abide, the Association shall have the right to cause the Owner to declare a default under the lease and to take appropriate action, including eviction of the tenant. Declarant shall have the right to limit or prohibit leasing activity for the initial two (2) year period after an Owner other than Declarant first purchases a Dwelling Unit upon a Lot. No permissible lease shall be for a term of less than six (6) months.

Animals

No animal, livestock, poultry or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any permitted pet shall be Visible From Neighboring Property. The Board shall have the right by Rule or otherwise to determine what shall constitute a generally recognized house pet, and what a reasonable number of such pets shall, in any instance, constitute.

Notwithstanding the foregoing, no permitted pets may be kept on any Lot which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is a Tenant, guest or invitee. The Board has the right, after notice and the opportunity for a hearing, to require the removal of any pet

that the Board, in its sole discretion, has determined is a nuisance. Persons walking pets shall carry a "pooper scooper" (a hand held shovel or other instrument designed for removing animal excrement from the ground) with them at all times and shall remove the pet's excrement from the Covered Property.

Garbage and Trash Regulation

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

Machinery and Equipment

No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot, except:

(a) during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a building, appurtenant structures or improvements thereon; or

(b) that which Declarant or the Association may require for the development, operation and maintenance of the Covered Property or other portions of the Covered Property.

Signs

No signs of whatever nature may be erected or placed within the Covered Property, except such signs as are permitted by the ARC Guidelines, and further except for those signs approved by the Board or by Declarant. Declarant may approve signs without any other consent or approval. The foregoing restriction shall not apply to signs required by legal proceedings or signs which may be permitted by law, or which may not be prohibited by private covenant, including certain political signs, public

safety or public service emergency vehicle signs, and "for sale," "for lease" or "open house" signs that are protected by A.R.S. §33-441 or by §33-1808. Further, the Board may enact rules governing "for sale" for "for lease" signs, but only to the extent permitted by law.

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

Model Homes; Declarant's Marketing Efforts

Nothing contained herein shall prohibit the construction and maintenance of model homes, sales offices, construction offices, property management offices and parking incidental thereto by persons engaged in the construction, marketing, rental or management of Dwelling Units within the Covered Property, provided that the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and ordinances of the City. Except as otherwise approved in writing by the Board, all model homes and sales offices shall cease to be used as such at any time the owner (or lessee thereof as the case may be) is not actively engaged in the construction or sale of Dwelling Units within the Covered Property (provided that the foregoing portion of this sentence shall not apply to property management offices).

For such time as any model home is actively being used by Developer for the marketing and sale of Dwelling Units within the Covered Property, such model homes may also be used by Developer as a model home or sales office for the sale or rental of residences constructed by Developer not located within the Covered Property.

5.2 *Variances*

Declarant may, at its sole discretion, grant variances from the restrictions set forth in Article 5 hereof if Declarant determines:

Either that (i) a particular restriction would create a substantial hardship or burden on an Owner or Occupant

and that such hardship is not attributable to the Owner's or Occupant's acts; or (ii) a change of circumstances has rendered the particular restriction obsolete; and

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

Declarant may assign to the Board its right to grant and approve variances. Such assignment may be subject to terms, conditions, and limitations. Any request made to Declarant or to the Board, shall be made in writing and be accompanied by supporting documentation. Declarant or the Board shall approve or disapprove of requests, promptly and in writing, as the particular circumstances may warrant. All decisions of Declarant or the Board shall be final and non-appealable. No variance granted by the ARC may be given that reverses or alters a decision made by Declarant unless Declarant shall consent thereto.

5.3 *Additional Restrictions*

Declarant may require prior to the development of any Lot, the imposition of special conditions in additional covenants in any case where deemed appropriate in the sole and absolute discretion of Declarant, and may require adequate provision for assessments and maintenance of the subject property and improvements and such other provisions as are deemed proper.

5.4 *Declarant's Exemption*

Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant or a Declarant Affiliate or their agents during the period of development and construction on the Covered Property of improvements, landscaping or signs deemed necessary or convenient by Declarant or a Declarant Affiliate, in its sole discretion, to the development or sale of property within the Covered Property. Declarant may assign, in whole or in part, its rights and privileges under this Section, and Declarant may grant, in its sole discretion, any similar rights and privileges to any Owner.

5.5 *Savings Clause*

The provisions of this Declaration shall be construed to be consistent with law, and should any provision violate law, then applicable law shall govern. Without limitation, no provision hereof shall be construed to prohibit the placement of solar heating or other such devices or antennae on Lots, provided such placement conforms to

such lawful requirements hereof or of the ARC Guidelines which do not conflict with law, nor shall the provisions hereof prohibit the placement of the American Flag or other protected flag, subject to allowed control or regulation by the Association, nor shall the provisions hereof prohibit the parking of public service, emergency or other vehicles as permitted by law, subject to the ARC Guidelines and rules and regulations of the Association not in conflict with such laws.

ARTICLE VI

ORGANIZATION OF ASSOCIATION

6.1 *General Purpose and Charge*

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

6.2 *Board of Directors and Officers*

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During the Class B Membership, the Board shall consist of an odd number of at least three (3), but not more than seven (7) directors who shall be Members or individuals designated by a corporate, partnership or other non-individual Member, and all directors may be appointed by the Declarant as the Class B Member so long as Declarant owns a single Lot. After the termination of the Class B Membership, the Board shall consist of at least three (3) directors who shall be Members elected by the voting Members. The initial directors appointed by Declarant may serve extended terms as provided in the Bylaws.

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

6.3 *Association Rules* By a majority vote of the Board, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property and the Common Area. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein, and may be enforced in the same manner as the provisions of this Declaration. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association. During the period while the Class B Membership continues to exist, the Class B Member may disapprove of actions of the Board to adopt, amend or repeal the Rules.

6.4 *Personal Liability* No Board member, officer, committee member, employee or representative of the Association, or the Association itself, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section shall, not apply to any Person-who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

ARTICLE VII

MEMBERSHIPS AND VOTING

7.1 *Votes of Owners* Every Owner of a Lot, including Declarant so long as Declarant is a Class A or Class B Member, shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues.

Each Class A Member shall have one (1) vote for each Lot owned. The Class B Member shall have three (3) votes for each Lot owned.

7.2 *Membership is Appurtenant to Ownership* Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only the Memberships for each Lot as are described herein. Joint ownership or ownership of undivided interests in any Lot as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot. Rather, the votes must be cast together in one unit.

7.3 *Declarant* Declarant shall be a member of the Association for so long as it holds a Class B Membership or owns any Lot.

7.4 *Membership Classes* The Association shall have two classes of Members:

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

Class B Members Class B. The Class B Members shall be the Declarant and each Declarant Affiliate. The Class B Membership shall terminate and be converted to a Class A Membership if Declarant in writing relinquishes its Class B Membership while it still owns any Lot.

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

Should Declarant elect to relinquish its Class B Membership while it still owns any Lot, Declarant shall be a Class A Member entitled to Class A votes for all Lots which it owns, provided that no such conversion shall affect any reserved rights of Declarant as otherwise set forth herein.

7.5 *Right to Vote* Class A votes shall only be cast by the Owner of the Lot such vote is attributable to. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with

satisfactory evidence thereof, for example, the recorded deed showing the name of the Owner of such Lot. The vote for each Member must be cast as a single unit, and solely by the Owner as and when applicable.

In the event that a Lot for which an Owner may vote is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot all such votes shall be deemed void.

7.6 *Members' Rights*

Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the ARC Guidelines.

7.7 *Control by Declarant, and Rights of the Class B Member*

Declarant, as the Class B Member has the right to control the Association. Such control shall exist by virtue of the right, at all times during the Declarant Control Period, to appoint Directors of the Association, as provided herein, as well as their replacements in the event of death, removal, resignation or otherwise. The Class B Member and Declarant shall have such additional and other rights and powers as are set forth herein or in other Governing Documents, including the right to disapprove of actions of the Board.

7.8 *Transfer of Membership*

The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a non-approved form of transfer shall be void. Any transfer of ownership in a Lot shall operate to transfer the Membership appurtenant to ownership to the new Owner.

ARTICLE VIII

ASSESSMENTS AND CREATION OF LIEN

8.1 ***Creation of Assessment Lien; Personal Obligation of Lot Owner***

Each Owner of a Lot, other than Declarant, by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument) is deemed to covenant and agree to pay to the Association the Assessments provided for herein. The amount and time for payment of Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Assessments, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate. Government Property is exempt, and shall not be subject to Assessment of any kind.

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

8.2 ***Annual Assessments***

The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth herein below. The Annual Assessments levied by the Association shall be used to accomplish the duties and purposes of the Association within the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Area, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate.

Subject to the limitations hereof, and such limitations as exist at law, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such

increased Annual Assessment in accordance with the provisions hereof.

8.3 *Annual Assessment Period*

Except as otherwise provided herein below, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence upon conveyance of the first Lot from Declarant to an Owner, and shall terminate on December 31 of the same year. The Annual Assessments shall be prorated for the initial Assessment Period. Without limitation, Assessments shall commence upon initial conveyance to any Person or entity, other than Declarant or to a Declarant Affiliate.

If any installment permitted for the payment of Assessments is not paid when due, the Board may accelerate the entire Annual Assessment or other Assessment. Late fees and interest may be added to the Delinquent Amount of any Assessment, as provided herein, and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law. Delinquent payments shall, to the extent permitted by law, apply first to the principal amount of any delinquent Assessments, then to accrued interest, and then to late fees and other sums due. The Owner shall also be liable for attorneys' fees and legal costs, including litigation related expenses and expert witness fees, if any. Attorneys' fees and costs incurred shall to the extent permitted by law, be deemed a part of the delinquent Assessment, and shall be secured by the lien therefor.

This provision shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

8.4 *Association's Rights in Spending Funds from Year to Year*

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

8.5 *Rate of Assessment*

The amount of the Annual Assessments, Maintenance Assessments and Special Assessments shall

be established by the Board, in its sole discretion. In establishing its budget and creating its plan for Assessments each year, the Board shall establish an Annual Assessment per Lot payable by the Owner of each Lot. The Board shall at any time have the right to adjust the Assessment made, and issue invoices for any additional sums due, subject to such limitations as exist at law.

8.6 *Maintenance Assessments*

The Association may assess Maintenance Assessments against a Lot in the event the need for maintenance or repair of areas maintained by the Association is caused through:

(a) The willful or negligent act or omission of any Owner (or of any other person for whom such Owner is legally responsible under applicable state law); or

(b) the maintenance of a Lot by an Owner, or failure to maintain, so as to present a nuisance, or to substantially detract from or negatively affect the appearance or quality of any neighboring Lot or other area; or

(c) the maintenance of a Lot by an Owner, or failure to maintain, so as to violate this Declaration; or

(d) any use of, or activity on, any Lot that causes maintenance or repair costs incurred or to be incurred by the Association with respect to Common Area to be substantially greater than those costs which would typically be incurred in relation to such Common Area, whether such use or activity is of a continuing nature or an isolated event.

In any such case, the Board may, depending upon the circumstances, give notice to the Owner of such Lot that unless specified corrective action is taken within a specified time period, the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action.

If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, at the Owner's sole cost, the Board is authorized and empowered, subject to such notice and hearing as may be required by law, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys, fees, shall be charged to the Owner as a Maintenance

Assessment.

The Maintenance Assessment shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot is subject, shall be secured by the Assessment Lien, and shall be due fifteen (15) days after written demand or notice by the Board.

In no case may any form of Maintenance Assessment be levied or charged with respect to Lots owned by Declarant.

This provision shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

8.7 *Fines and Penalties.* If any Owner, his or her family, or any licensee, invitee, tenant or lessee violates the provisions hereof, or any provision of any of the ARC Guidelines or other rules of the Association, the Board after providing the Owner with notice of the violation and an opportunity for a hearing as required by law, may levy a fine upon the Owner, may suspend the violator's right to use the Common Area other than the private streets and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including attorneys' fees and costs incurred. Such violation shall also be grounds for the Association, should it wish, to suspend the said rights of the Owner and its family members, guests and invitees. This Section shall be subject to such limitations as are imposed by law, including A.R.S. § 33-1807.

The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within fifteen (15) days of notice of the due date, may be charged to the Owner of the Lot in question, and may be collected as provided by law.

In no event shall any fine be imposed for a default or violation of the Governing Documents, other than a failure to pay Assessments, without first affording the Owner notice and an opportunity for hearing. This Section shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

8.8 *Special Assessments*

In addition to the Annual Assessments, the Board may levy a Special Assessment (i) for the purpose of constructing improvements to Common Area; (ii) correcting an inadequacy in the Association's accounts; (iii) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owned by the Association; or (iv) defraying other extraordinary expenses or paying other expenses the Board may deem appropriate, including increased expenses encountered by the Association in connection with new or expanded Common Area amenities or features, or in connection with increased or unforeseen expenses relating to the operation and maintenance of such amenities, or in connection with increased costs of insurance, taxes, or other items of expense. The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments shall be approved by the Class B Member so long as such Membership exists.

8.9 *Billing and Collection Procedures*

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

In case the Owner of a Lot having a right to pay a reduced payment amount as provided herein fails to notify the Board at such time as the payment amount should be increased, such Owner shall nonetheless be liable for the increased amount of the Assessment and such Owner's failure to notify the Board shall not relieve such Owner of the liability for such increased Assessment.

8.10 *Collection Costs and Interest on Delinquent Amounts*

Any Delinquent Amount shall have added thereto a late charge of the greater of fifteen dollars ($15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within fifteen (15) days after the due date. Any Delinquent Amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, the then prevailing interest rate

on loans insured by FHA or VA, or such rate as is determined from time to time by the Board. The Owner shall be liable for all costs, including but not limited to attorneys, fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount, and such amounts, to the extent permitted by law, shall be deemed a part of the Assessment Lien. This Section shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

8.11 *Working Capital Fund and Transfer Fees*

To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, each purchaser of a Lot upon which the construction of improvements is complete, as evidenced by a certificate of occupancy or similar instrument that allows the Lot to be used as a residence, shall pay to the Association immediately upon becoming the Owner of a Lot a sum up to, but not more than, twenty-five percent (25%) of the then-current Annual Assessment applicable to such Lot (the "Working Capital Fund Contribution"), as determined at the discretion of the Board. Such Working Capital Fund Contribution may be collected or waived at the sole discretion of the Board or Declarant, and a waiver may be in advance or applied retrospectively.

A Working Capital Fund Contribution shall continue to be payable upon each subsequent sale of a Lot, unless waived by the Board in writing. 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 this Declaration and the Articles and Bylaws. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

To the extent permitted by law, the Association may collect reasonable administrative transfer fees (the "Administrative Transfer Fees") to compensate it for expenses in complying with State law as it pertains to providing notice and documents to prospective purchasers. Such Administrative Transfer Fees shall be in amounts and payable at such times as determined by the Board.

8.12 *Declarant's Exemption*

In lieu of Assessments, Declarant and each Declarant Affiliate shall pay the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current

ordinary expenses for the operation and maintenance of the Association and Common Area (i.e., only for actual budget deficits), but only up to the full Annual Assessment for each such Lot actually owned by Declarant or Declarant Affiliate in the Covered Property. A shortfall or deficiency shall exist if current ordinary and budgeted expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that neither Declarant nor a Declarant Affiliate shall be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year, which decrease was not approved by Declarant, nor for any shortfall or deficiency incurred after expiration of the Declarant Control Period. Declarant and any Declarant Affiliate may at any time at their sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay instead up to the full Annual Assessment for each Lot owned by Declarant or by Declarant Affiliate. Declarant's and Declarant Affiliate's obligation to contribute toward a deficiency as provided herein is supported by a lien on Declarant's Lots and the Lots of each Declarant Affiliate.

In the event of deficiencies, as aforestated, Declarant and each Declarant Affiliate shall share the burden of payment of the deficiency by paying their ratable share of same, up to the full amount of the Annual Assessment for each Lot owned by them. Further, should Declarant assign its rights to the exemption from Assessments as provided herein, whether such assignment be in whole or in part, then the assignee shall, in the case of any deficiency as described above (and meeting the conditions set forth above), be liable for its ratable share of same, up to the full amount of the Annual Assessment for each Lot owned by them, and not more.

In no event shall Declarant or any Declarant Affiliate be required to contribute to any deficiency after termination of the Declarant Control Period.

8.13 *Savings Clause* Notwithstanding the provisions of this Article, or any other provision of this Declaration, the extent of any lien of the Association shall be subject to such provisions as are established at law or in equity, including such limitations as are established and imposed by A.R.S. § 33-1807.

ARTICLE IX

ENFORCEMENT OF THE ASSESSMENT LIEN

9.1 *Association Remedies to Enforce Assessments*

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

Bringing an action against the Owner to recover judgment against the Owner who is personally liable for the Assessments; and,

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

9.2 *Subordination of Assessment Lien*

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

(a) the lien of any First Mortgage encumbering a Lot; and

(b) the lien for taxes or other governmental assessments which are deemed superior hereto by applicable law.

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

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

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

ARTICLE X

MAINTENANCE

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

Association Duty

The Association, or its duly delegated representative, shall maintain and otherwise manage Common Area and accept responsibility for all real property and ad valorem taxes on the Common Area. Common Area to be maintained by the Association may be identified on recorded subdivision plats approved by Declarant, or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto. A separate instrument approved by Declarant may limit the Association's responsibilities with respect to certain Common Area.

Rights of Way

The Association may also in its discretion elect to maintain landscaping and similar improvements within public rights of way located within the Covered Property to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity with respect to such public rights of way.

Private Drainage-ways, Common Areas, Private Streets and Private Sewers

In accordance with the provisions enumerated on the Plat, the Association shall accept responsibility and liability for the construction, maintenance, operation and control of the private drainage-ways, common areas, and all private sewers within the Covered Property. All private streets located within Common Areas A shall be maintained by the Association.

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

ARTICLE XI

RIGHTS AND POWERS OF ASSOCIATION

11.1 ***Rights, Powers and Duties of the Association*** In addition to the rights and powers of the Association set forth in the Governing Documents, the Association shall have such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Governing Documents shall be available for inspection at the office of the Association during reasonable business hours. To the extent development may be governed by that the Development Agreement, the Association shall in performing its duties and functions comply with the specific terms thereof that pertain to the Association.

11.2 ***Rules and Regulations*** In addition to the right to adopt, amend and repeal rules and regulations (the "Rules") on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations, as a part of the Rules, with respect to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of the Governing Documents. Upon adoption, the Association's Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

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

11.4 *Enforcement Methods and Means*

The Association, after affording such notice and opportunity for a hearing, or to be heard, as may be required by law, may enforce the provisions hereof at law or in equity, including, but not limited to:

(a) Imposing reasonable monetary penalties, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her guests, invitees and Tenants or residents.

(b) Suspending an Owner's right to vote after notice and opportunity to be heard.

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

(d) Exercising self-help or taking action to abate any violation of the provisions hereof.

(e) Requiring an Owner at the Owner's expense to remove any offending condition, structure or improvement on the Owner's property, and further requiring the said Owner to restore his or her property to the condition in which it previously existed, without such action being a trespass.

(f) Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration from continuing to perform and further activities on the Covered Property.

(g) Towing vehicles that are parked in violation of the provisions hereof.

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

The Board may weigh financial and other factors, such as possible defenses, legal merit and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver,

and any failure by the Association to take legal action shall not limit or waive the right of any Owner to pursue proper action, nor the right of the Association to pursue action at a future time should it so desire.

11.5 *Contracts with Others; Bulk Service Agreements*

Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant and Declarant Affiliates, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant Affiliates, provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association be for a term not exceeding one year and must be terminable, without penalty, by the Association for cause at any time and without cause upon no more than such period as may be set forth in the Bylaws.

The Association may, without limitation, provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant or Developer, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or may be funded as otherwise determined by the Board in accordance with this Declaration. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, trash and refuse service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.

If all Lots within the Covered Property are to be

served by a particular bulk service agreement, the Board shall have the option either to (i) include the Association's costs under such bulk service agreement in the budget for each applicable fiscal year and thereby include such costs in the Assessments for each such applicable year, or (ii) separately bill to each Owner his, her or its proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly).

It is expressly agreed by all Owners that the Association's rights shall include the designation of certain service providers as the exclusive provider for the Covered Property. By way of example, the Association may elect to designate a waste management, or trash and refuse, service provider as the sole provider in order to eliminate the frequency of truck travel, interference and other adverse effects of having multiple such service providers for the Covered Property.

11.6 *Change of Use or Conveyance of Common Area*

The Declarant and the Association shall have broad rights to convey Common Area as set forth in Section 3.1 above. In addition, and without limitation, the use of Common Area may also be changed, or portions conveyed, as follows:

Resolution of Board

After Declarant no longer owns any Lot, the Association, upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Area is no longer in the best interests of the Owners and Occupants, and upon approval of such resolution by Owners representing at least two-thirds (2/3rds) of the votes allocable to Lots within the Covered Property, shall have the power and right but in compliance with law to change the use of Common Area or to convey same (and in connection therewith to take whatever actions are required to accommodate any new use).

Dedications

The Association shall have the right to dedicate all or any part of the Common Area to any public authority, utility or public service corporation, provided that:

(a) the Board in its sole discretion determines that such dedication does not have a material and substantial adverse effect on the enjoyment of the remaining Common

Area by the Owners and Occupants; and

(b) such dedication shall be approved by Class B Member so long as such Membership exists.

Resubdivisions Declarant shall at any time have the right to cause the Association or the Board to resubdivide Common Area, and may do so without the consent or approval of any other Member, and without a vote or meeting of Members.

ARTICLE XII

EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA

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

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

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

12.2 ***Authority to Purchase Insurance*** The Association shall as a Common Expense purchase and maintain such property damage and liability insurance upon the Common Area and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance

coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions.

Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers' liability insurance covering all officers and directors of the Association as well as all regular and alternate members of the ARC, the Declarant, and, to the extent such insurance is reasonably available, any property manager under contract with the Association, all in amounts and on terms adequate to permit the Association to indemnify such persons pursuant to the provisions hereof and pursuant to the provisions of the Articles and Bylaws. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

12.3 *Individual Responsibility*

It shall be the responsibility of each Owner or Occupant to provide insurance for real or personal property or interests owned or held by such Owners within the Covered Property, including, but not limited to, homeowners insurance, hazard, fire and casualty insurance, liability insurance, and property damage insurance covering all additions and improvements to Lots, furnishings and personal property therein, and personal liability.

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

12.4 *Insurance Claims*

The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association covering Common Area and improvements thereon, property or interests of the Association, liability of the Association, and

other such insurance.

Each Owner shall execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing.

The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

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

ARTICLE XIII

ALTERNATIVE DISPUTE RESOLUTION

13.1 *Approval of Association Action*

Except as provided in this Article, the Association may not commence a legal proceeding or an action within the purview of this Article XIII without the approval of at least two-thirds (2/3rds) of the Class A votes of Members eligible to vote. This Article shall not apply, however, to (i) actions brought by the Association to enforce governing documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

Prior to the Association or any Member, commencing any proceeding to which Declarant, Developer, any Declarant Affiliate, or beneficiary thereof, is a party, including but not limited to an alleged defect of any Improvement, Declarant and each Declarant Affiliate, and Developer shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

13.2 *Arbitration of Disputes* For purposes of this Article XIII only:

Definitions "Declarant Party" means and includes Declarant, Developer, any beneficiary, director, officer, partner, member, manager, employee, agent or representative of Declarant, Developer, any affiliate of Declarant or Developer, and any contractor (including, without limitation, A.F. Sterling Homebuilders, LTD.), subcontractor, consultant, design professional, engineer or supplier who provided labor, services or materials to the project and who is bound or has agreed to be bound to the following dispute notification and resolution procedures.

"Dispute" means any and all disputes, controversies, causes of action, complaints or claims by, between or among any Declarant Party and any Owner, or the Association, arising out of or in any way relating to the Lot, the Dwelling Unit, the Project, any sales contract, any liquidated damages issue under any sales contract, any home warranty furnished to an Owner, or deemed to exist in favor of, any Owner, express or implied, or any other agreements, duties, obligations, or liabilities between any Declarant Party and any Owner, or the Association, relating to the sale of any Lot or the sale or construction of any Dwelling Unit, or regarding the use or condition of the Lot or the Dwelling Unit, or the design or construction of, or any condition on or affecting, any Dwelling Unit, Lot or the Project, including without limitation construction defects, soil conditions, grading, specifications, installation of Improvements, or disputes that allege strict liability, negligence or breach of implied, express or statutory warranties as to the condition of the Lot, the Dwelling Unit or other portions of the Project.

"Project" means the development, construction and marketing of any Lot or Dwelling Unit, including any portion of the Covered Property.

Agreement to Arbitrate All Disputes shall be submitted for resolution by binding arbitration to the American Arbitration Association ("**AAA**") in accordance with the Home Construction Arbitration Rules (or their substantial replacement if such rules are superseded, or by substantially similar and applicable rules as determined by AAA). The arbitration shall occur in Pima County, Arizona and not elsewhere. Judgment upon any award rendered in arbitration may be entered in any court

having jurisdiction. The arbitration provisions hereof are governed by the Federal Arbitration Act.

Each Owner agrees that all Disputes shall be brought and asserted only on an individual basis and not as a member of any purported class or representative action or collective proceeding. No party may seek to consolidate or join Disputes with those of another person or entity.

Notwithstanding the above, nothing herein precludes an action in court solely to recover Assessments, charges, attorneys' fees, costs or other sums due hereunder, or otherwise to enforce any provision of this Declaration by injunctive relief.

Waiver of Litigation Rights

Each Owner hereby acknowledges and agrees to the following:

(a) Owner is giving up any rights Owner might possess to have a Dispute litigated in a court or jury trial; and

(b) Owner's discovery and appeal rights will be limited.

The Association will be bound by the dispute resolution procedures described herein.

Interpretation; Scope of Authority

All Disputes shall be governed, interpreted and enforced according to the Federal Arbitration Act (9 U.S.C. §§ 1-16).

The arbitrator shall have the authority to try and shall try all issues, whether of fact or law, including without limitation, the validity, scope and enforceability of these dispute resolution provisions, and may issue any remedy or relief that the courts of the State of Arizona could issue if presented the same circumstances.

Waiver of Jury Trial; Notice Requirements

In the event that the dispute resolution procedures set forth or referenced herein are determined to be invalid or unenforceable in whole or in part, such that the Dispute proceeds by way of civil litigation proceedings in any court, the parties nonetheless waive any and all rights to a jury trial. The parties make these waivers knowingly, intentionally and voluntarily. The parties agree that as a prerequisite to any such court proceedings, the parties must comply with A.R.S. § 12-1361 et seq. (regarding Purchaser

Dwelling Actions) concerning notice and opportunity to repair.

13.3 *Conflicts*

In the event that a separate binding arbitration agreement exists by and between an Owner and Declarant or Developer, then in the event of a conflict between such separate agreement and the provisions hereof, the separate agreement shall control in Disputes between such Owners and Developer or Declarant.

13.4 *Amendment of Article; Severability*

Without the express prior written consent of Declarant, this Article may not be amended for a period of thirty (30) years from the effective date of this Declaration. The provisions of this Article shall be deemed severable, and should any portion be declared unenforceable by any court of competent jurisdiction, the remaining provisions shall be unaffected.

ARTICLE XIV

ANNEXATION AND DE-ANNEXATION

14.1 *Annexation of Annexable Property*

Declarant may, in its sole discretion, at any time and from time to time up to the date which is twenty-five (25) years after the date this Declaration is recorded, annex to the Covered Property any Annexable Property. To effect such annexation, a Declaration of Annexation covering the Annexable Property (or the applicable portion or portions thereof) shall be executed and recorded by Declarant.

The recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the Annexable Property (or the applicable portion or portions thereof) described therein as of the date of recordation or such later date, if any, as may be set forth in such Declaration of Annexation, making such Annexable Property (or the applicable portion or portions thereof) and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association as of the date of recordation or such later date, if any, as may be set forth in such Declaration of Annexation. In addition to the foregoing, and notwithstanding any decision not to annex the Additional Property or any portion thereof, Declarant may grant easements for ingress, egress, utilities, and other purposes for the benefit of such Annexable Property, all on

terms deemed by Declarant to be reasonable, and easements shall be deemed reserved over and across all streets and roads in favor of any land not annexed.

14.2 *Declarations of Annexation*

The annexations authorized under this Section shall be made by recording a Declaration of Annexation, which instrument may contain additional covenants, conditions, restrictions, easements or other terms. The portions of Annexable Property annexed in accordance with this Section shall thereupon become fully a part of the Covered Property subject to all provisions of this Declaration (including, but not limited to, provisions hereof regarding Assessments).

A Declaration of Annexation may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof). In no event, however, shall any such Declaration of Annexation revoke or conflict with this Declaration except to the extent specifically permitted hereby.

14.3 *Annexation by Owners*

The Association may, from time to time, annex to the Covered Property additional Annexable Property provided that such annexation has been approved by the Owners possessing at least seventy-five percent (75%) of the total votes then entitled to be cast by Class A Members, with or without a meeting, subject to the right of the Class B Member to disapprove the action.

To effect such annexation, a Declaration of Annexation covering the Annexable Property shall be executed by the President or Vice-President of the Association and attested to by the Secretary of the Association, and executed by the owner of the Annexable Property sought to be annexed. The recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the Annexable Property described therein, making such Annexable Property and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association.

Any annexation during the period of the Class B Membership shall have the written approval of the Class B Member. Absent such approval, any such annexation shall

be deemed void.

14.4 *De-Annexation of Covered Property*

Declarant may, in its sole discretion, at any time and from time to time up to the date which is twenty-five (25) years after the date this Declaration is recorded, de-annex or withdraw from the Covered Property any portion or portions thereof (subject to the written consent of the owner of the portion or portions to be de-annexed or withdrawn, if other than Declarant).

To effect such de-annexation or withdrawal, Declarant shall execute and record a Declaration of De-Annexation setting forth the legal description of the portion or portions of the Covered Property to be de-annexed or withdrawn, and such Declaration shall be executed by the Declarant and the Owner of the land to be withdrawn. The land to be withdrawn may include any portion of the Covered Property, including Lots and Common Area. Recording such Declaration of De-Annexation shall constitute and effectuate the de-annexation and withdrawal of the applicable portion or portions of the Covered Property described therein, and such property and the Owners and Occupants thereof shall no longer be subject to this Declaration or the jurisdiction of the Association. Notwithstanding the preceding sentence, except as otherwise provided in the applicable Declaration of De-Annexation, de-annexation or withdrawal of any portion or portions of the Covered Property will not be effective until the owner of the property to be de-annexed or withdrawn has paid all unpaid Assessments applicable to such property (unless exempt), prorated to the date of de-annexation or withdrawal.

It is specifically understood that this right of de-annexation or withdrawal may be exercised in Declarant's sole and absolute discretion, and that once de-annexed or withdrawn, none of the provisions hereof shall apply to or encumber the land. Further, the Class B Member may cause the Association to grant and convey such easements as may be necessary to benefit such land de-annexed or withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

14.5 *Protection of Declarant*

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

ARTICLE XV

AMENDMENTS; FIRST MORTGAGEE PROTECTION

15.1 *Term and Amendments*

Broad Power of Declarant

Except as may be amended in accordance with the terms hereof, the provisions of this Declaration shall run with the land and endure in perpetuity. In addition to specific amendment rights granted elsewhere in this Declaration, so long as Declarant owns a single Lot within the Covered Property, Declarant may amend this Declaration for any purpose, and without the consent or approval of any Owners or Members, or any other Person, regardless of whether any such amendment is uniform in nature, and such amendments may change or impact the provisions hereof regarding voting rights, assessments and use restrictions.

Without limitation, for so long as Declarant owns any Lot, Declarant may of its own volition, and without the consent or approval of any Owners or Members, or any other Person, amend this Declaration for any purpose, including the following purposes: (i) to bring any provision hereof into compliance with applicable law; (ii) to satisfy the requirements of any Agency pertaining to lending criteria, or established as conditions for the acceptability or approval of mortgages, mortgage insurance, loan guarantees or other factors; (iii) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof; or (vi) to better provide for the administration and maintenance of the Covered Property, which, during the Declarant Control Period, shall be determined by Declarant in its sole discretion.

Any amendment during such time as Declarant is a Class B Member or a Class A Member of the Association shall require the written approval of the Declarant. Further, so long as Declarant owns any land within the Covered Property, Declarant may, without any other consent or approval, amend this Declaration to clarify the application of the provisions hereof to any land which may be annexed, or for any other reasonable purpose in connection with any land which may be annexed.

Power of Association

By the Association. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners,

including Declarant, who in the aggregate own at least two-thirds (2/3) of the Lots within the Covered Property, and Declarant's consent, as well, so long as Declarant owns any portion of the Covered Property.

15.2 *Condemnation Proceeds, Rights of Mortgagees, etc.* No Owner, or any other party, shall have priority over any rights of any First Mortgagee pursuant to its mortgage or deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area.

Payment of Charges by First Mortgagees First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Area in the case of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Association.

Inspection of Records Any Owner or First Mortgagee shall be entitled to: (i) inspect current copies of the Governing Documents, and the books, records, and financial statements of the Association during normal business hours; and (ii) receive, upon written request therefor, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party.

ARTICLE XVI

MISCELLANEOUS

16.1 *Additional Covenants* In furtherance of the orderly sale and development of the Covered Property, and of the protection and enhancement of the value of the Covered Property, Declarant shall have the right, power and authority (but not the obligation), where in Declarant's discretion the circumstances so warrant, to execute prior to, with or after the sale of any portion of the Covered Property by any purchaser, a supplement to this Declaration adding additional covenants or restrictions, qualifying or limiting the application of this Declaration to such land, or entirely excepting such land from the coverage hereof any from all of the restrictions, limitations or other provisions included

herein.

Such additional covenants or restrictions may be referred to herein as the "Additional Covenants." No such Additional Covenants shall exempt any such land or the respective owners thereof from the obligations to pay Assessments hereunder or from the Assessment Lien in regard thereto or deprive such land or its Owner of membership and voting rights otherwise established by this Declaration, except that Declarant at all times shall have the right record a Declaration of De-Annexation with respect to any land.

Such Additional Covenants shall be recorded and shall be binding upon Declarant, the Association, the ARC and each Owner and Occupant. Declarant shall deliver a true and complete copy of any such Additional Covenants to the Association within a reasonable time after recordation thereof. After conveyance of a Lot to an Owner thereof, de-annexation of such land or the imposition of Additional Covenants thereon shall require the consent of such Owner.

16.2 ***Enforcement Rights***

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

16.3 ***Interpretation of the Covenants***

Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions in Article V hereof. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

16.4 ***Severability***

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

16.5 ***Change of Circumstances***

Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the

provisions of this Declaration.

16.6 ***Declarant's Disclaimer of Representations***

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

No provision of any development plan showing or applicable to the Covered Property shall be deemed a representation that any facility, land or feature shall be included in the Covered Property or the Common Area.

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

16.7 ***View Impairment***

Neither the Declarant, nor the Association nor Developer guarantees or represents that any view or passage of light and air over and across any portion of the Covered Property, including any Lot, from adjacent Lots or Common Area will be preserved without impairment. Neither the Declarant, nor the Association nor Developer shall have the obligation to prune or thin trees or other landscaping except as required by the ARC or ARC Guidelines. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any view which exists at any point in time for a Lot may be impaired or obstructed by further construction, including, without limitation, by construction of improvements (including without limitation, landscaping) by Declarant, Developer or by any third person (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including,

without limitation, any broker or salesperson, has any right to bind Declarant, the Association or Developer with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

16.8 *Assumption of Risk*

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

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

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

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

16.9 *Successors and Assigns*

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

[*Intentionally Left Blank]*

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

DECLARANT:

SCOTIA JV 2005, L.L.P., an Arizona limited liability partnership

By: Scotia Development Partners 2005 LLC, an Arizona limited liability company, General Partner

By: Scotia Group Limited, an Arizona corporation, Manager
By: _____
Randy Agron
Its: Vice President

By: _____
Jonathan Fenton
Manager

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me June 5th, 2013, by Randy Agron, Vice President of Scotia Group Limited, an Arizona corporation, Manager of Scotia Development Partners 2005 LLC, an Arizona limited liability company, on behalf of Scotia JV 2005, L.L. P., an Arizona limited liability partnership.

_____
Notary Public

My commission expires: April 20, 2014

OFFICIAL SEAL
HELEN I. HOY
NOTARY PUBLIC-ARIZONA
PIMA COUNTY
My Comm. Exp. April 20, 2014

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me June 5th, 2013, by Jonathan Fenton, Manager of Scotia Development Partners 2005 LLC, an Arizona limited liability company, on behalf of Scotia JV 2005, L.L. P., an Arizona limited liability partnership.

_____
Notary Public

My commission expires: April 20, 2014

OFFICIAL SEAL
HELEN I. HOY
NOTARY PUBLIC-ARIZONA
PIMA COUNTY
My Comm. Exp. April 20, 2014

Uplands at Lambert Lane Homeowners Association

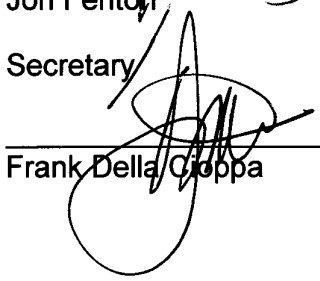
The undersigned certify that the foregoing amendment and restatement was made by the owners of greater than two-thirds of the Lots in the Covered Property.

President



Jon Fenton

Secretary



Frank Della Ciappa

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