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**AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HERITAGE HIGHLANDS AT REDHAWK.**

WHEREAS, a Declaration of Covenants, Conditions, and Restrictions for Heritage Highlands at Redhawk was recorded on May 24, 1996, in Docket 10302 at Page 853 et seq., office of the Pima County Recorder ["Original Declaration"] and has been amended as follows:

Amendment to the Declaration of Covenants, Conditions and Restrictions recorded on October 30, 2000 in Docket 11414 at Page 1938.

Amendment to the Declaration of Covenants, Conditions and Restrictions recorded on November 27, 2001 in Docket 11683 at Page 5751.

Amendment to the Declaration of Covenants, Conditions and Restrictions recorded on April 17, 2003 in Docket 12031 at Page 4300.

Amendment to the Declaration of Covenants, Conditions and Restrictions recorded on December 15, 2003 in Docket 12197 at Page 3141.

Amendment to the Declaration of Covenants, Conditions and Restrictions recorded on January 29, 2004 in Docket 12227 at Page 5822.

WHEREAS, Section 17.19 of the Original Declaration provides that the Original Declaration may be amended by the Declarant for so long as it owns at least 10% of the Property and Annexed Property without the consent or approval of any of the Owners or Members; and

WHEREAS, a Declaration of Development Covenants, Conditions, and Restrictions recorded by Bay Colony-Gateway, Inc., a Delaware Corporation, was recorded on April 5, 1996 in Docket 10267, page 523, office of the Pima County Recorder (the "Bay Colony-Gateway Covenants"), and also governs the use and occupancy of the real property subject to the Original Declaration; and

WHEREAS, the Declarant owns more than 10% of the Property and Annexed Property and desires to amend and restate the Original Declaration.

NOW, THEREFORE, the undersigned Declarant amends and restates the Declaration of Covenants, Conditions and Restrictions for Heritage Highlands at Redhawk and all amendments thereto subject to the following facts and intentions:

- A. All real property which could have been annexed into Heritage Highlands has been annexed and has been made subject to the terms and conditions of the Original Declaration
- B. The provisions of this Declaration govern the use and ownership of the following

described real property (the "Property"):

Heritage Highlands at Redhawk, Lots 1 through 392, as shown in Book 48 of Maps and Plats at Page 31, Pima County Recorder

Heritage Highlands II at Dove Mountain, Lots 393 through 541, as shown in Book 52 of Maps and Plats at Page 16, Pima County Recorder

Heritage Highlands III at Dove Mountain, Lots 542 through 719, as shown in Book 53 of Maps and Plats at Page 54, Pima County Recorder

Heritage Highlands IV at Dove Mountain, Lots 720 through 844, as shown in Book 54 of Maps and Plats at Page 40, Pima County Recorder

Heritage Highlands V at Dove Mountain, Lots 845 through 976, as shown in Book 54 of Maps and Plats at Page 94, Pima County Recorder

Heritage Highlands VI at Dove Mountain, Lots 977 through 1146, as shown in Book 56 of Maps and Plats at Page 32, Pima County Recorder

Heritage Highlands VII at Dove Mountain, Lots 1147 through 1298, as shown in Book 57 of Maps and Plats at Page 67, Pima County Recorder

C. All of the Property will be held, sold and conveyed subject to the following easements, equitable servitudes, limitations, reservations, rights-of-way, liens, charges, covenants, conditions and restrictions. The provisions of this Declaration are for the purpose of protecting the value and desirability of the Property. This Declaration runs with title of the Property; is binding on all parties who have any right, title or interest in any of the Property, their heirs, successors and assigns; and inures to the benefit of each Owner of a Lot within Heritage Highlands at Redhawk. The provisions of this Amended and Restated Declaration supersede all of the provisions of the Original Declaration and all amendments thereto, and also supersede each and every provision of the Bay Colony-Gateway Covenants, which, upon the sale of the last lot within Heritage Highlands at Redhawk by the Declarant, will be null and void and of no further force and effect.

## ARTICLE I DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

**Section 1.1** "Act" refers to the Arizona Planned Communities Act, A.R.S. §33-1801, et. seq., as amended from time to time.

**Section 1.2** "Architectural and Landscape Committee" or "ALC" refers to the committee or committees provided for in Article V.



**Section 1.3 "Architectural Standards"** means the rules, regulations and guidelines for architectural improvements (including landscaping) promulgated by the Board pursuant to Section 5.2.

**Section 1.4 "Articles of Incorporation" and "Bylaws"** refers to the Articles of Incorporation and Bylaws of the Association as amended from time to time.

**Section 1.5 "Assessment"** means any of the following types of Assessment:

A. "Capital Improvement Assessment" which is a charge against each Owner and the Owner's Lot, and which represents a portion of the cost to the Association for the installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize pursuant to the provisions of this Declaration.

B. "Regular Assessment" means the regular, periodic assessments to be paid by each Owner to the Association for that Owner's share of the Common Expenses.

C. "Reimbursement Assessment" means any charge designated as a Reimbursement Assessment in the Governing Documents.

D. "Special Assessment" means any charge designated as a Special Assessment in the Governing Documents.

**Section 1.6 "Association"** means Heritage Highlands at Redhawk Master Homeowners Association, an Arizona nonprofit corporation, incorporated under the laws of the State of Arizona, and its successors and assigns.

**Section 1.7 "Association Rules"** means those rules adopted by the Association pursuant to Section 6.5, the Golf Course Rules referenced in Section 13.1 and the Architectural Standards.

**Section 1.8 "Board"** means the Board of Directors of the Association.

**Section 1.9 "City"** means the Town of Marana, Arizona.

**Section 1.10 "Common Areas"** means all real property and the facilities and improvements constructed on such real property, which are owned, leased, held or controlled by the Association or over which the Association has an easement for maintenance and the common use and enjoyment of the Owners.

**Section 1.11 "Common Area Walls"** refers to the walls located either on the side or back of the Lots with one side facing the Common Areas, including the golf course and the other side facing into the Lot.

**Section 1.12 "Common Expenses"** refers to the actual and estimated costs of:

A. maintenance, management, operation, repair and replacement of the Common Areas (including the Golf Course Property) and all other areas or facilities that are maintained by

the Association;

B. unpaid Assessments;

C. maintenance, repair and replacement by the Association of areas within the public right-of-way of public streets in the vicinity of the Property as provided in this Declaration or pursuant to agreements with the City or County, or payments to another entity for such maintenance, and including payments made in connection with the Retained Infrastructure as provided in Section 3.2;

D. operation, maintenance, repair and replacement of any Sewer Lift Station, performed by an entity to which the Association pays assessments or charges;

E. costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

F. the costs of utilities, trash pickup and disposal, gardening and other services which generally benefit and enhance the value and desirability of the Common Areas;

G. the costs of fire, casualty, liability, worker's compensation and other insurance covering the Common Areas;

H. the costs of any other insurance obtained by the Association;

I. reasonable reserves as deemed appropriate by the Board in its sole and absolute discretion;

J. the costs of providing fidelity insurance for the members of the Board, any professional managing agent or any other person handling the funds of the Association;

K. taxes paid or owing by the Association;

L. amounts paid by the Association for discharge of any lien or encumbrance levied against any portion of the Common Areas

M. costs incurred by the ALC or any other committee established by the Board;

N. other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, or the costs of any other item or items designated in the Governing Documents, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

**Section 1.13** "County" refers to the Pima County, Arizona.

**Section 1.14** "Declarant" means First American Title Insurance Company, a California

corporation, as Trustee under Trust No. 4699, its successors and assigns.

**Section 1.15 "Declaration"** refers to this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Highlands at Redhawk.

**Section 1.16 "Eligible Mortgage Holder"** means a First Mortgagee that has in writing requested that the Association send it notice of any amendments or other material actions as specified in Section 15.5 of this Declaration.

**Section 1.17 "Exhibit"** means those documents which are attached to this Declaration and which, by reference, are incorporated in this Declaration.

**Section 1.18 "Federal Agencies"** means one or more of the following agencies: Federal Home Loan Mortgage Corporation ("FHLMC"), Federal National Mortgage Association ("FNMA"), and Government National Mortgage Association ("GNMA").

**Section 1.19 "Golf Course Property"** or "Golf Course" means the real property which has been improved with an 18-hole golf course, maintenance building and facilities, clubhouse and other improvements, which is located within the boundaries of the land described in Exhibit D. The Golf Course Property is part of the Common Areas.

**Section 1.20 "Governing Documents"** refers to this Declaration, the Articles of Incorporation, Bylaws, Rules and Architectural Standards, as amended from time to time.

**Section 1.21 "Guest"** is a visitor who is temporarily staying with the Owner.

**Section 1.22 "Lot"** means a subdivision lot as shown on the recorded subdivision Plats. Lots do not include the Common Areas; provided, however, that Lot 689 is adjunct to the Common Area as more specifically set forth in Section 11.29.

**Section 1.23 "Member"** refers to every Person who is a Member of the Association.

**Section 1.24 "Merchant Builder"** means a third party builder designated by Declarant as exempt from some of the requirements of this Declaration, as provided herein.

**Section 1.25 "Mortgage"** means any duly recorded mortgage or deed of trust encumbering a Lot. A "First Mortgage" refers to a Mortgage which has priority over all other Mortgages encumbering a specific Lot.

**Section 1.26 "Mortgagee"** refers to the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" means the holder of a First Mortgage.

**Section 1.27 "Owner"** refers to one or more individuals or entity who is the record Owner of a fee simple title to a Lot, including Declarant, or the vendee under an installment land sales contract, but excluding any Person who has an interest in a Lot solely as security for the performance of an obligation. Each Owner is responsible for the actions of his/her family members, guests, tenants and invitees.

**Section 1.28 "Perimeter Wall"** refers to the walls constructed by the Declarant which surround the Heritage Highland development.

**Section 1.29 "Person"** includes a corporation, company, partnership, firm, association or society, as well as a natural person.

**Section 1.30 "Plat"** refers to the following Plats of record, all of which describe the Property subject to the Declaration.

Heritage Highlands at Redhawk, Lots 1 through 392, as shown in Book 48 of Maps and Plats at Page 31, Pima County Recorder

Heritage Highlands II at Dove Mountain, Lots 393 through 541, as shown in Book 52 of Maps and Plats at Page 16, Pima County Recorder

Heritage Highlands III at Dove Mountain, Lots 542 through 719, as shown in Book 53 of Maps and Plats at Page 54, Pima County Recorder

Heritage Highlands IV at Dove Mountain, Lots 720 through 844, as shown in Book 54 of Maps and Plats at Page 40, Pima County Recorder

Heritage Highlands V at Dove Mountain, Lots 845 through 976, as shown in Book 54 of Maps and Plats at Page 94, Pima County Recorder

Heritage Highlands VI at Dove Mountain, Lots 977 through 1146, as shown in Book 56 of Maps and Plats at Page 32, Pima County Recorder

Heritage Highlands VII at Dove Mountain, Lots 1147 through 1298, as shown in Book 57 of Maps and Plats at Page 67, Pima County Recorder

**Section 1.31 "Property"** refers to any real property which is subject to this Declaration.

**Section 1.32 "Qualifying Resident"** means a person who is 55 years of age or older.

**Section 1.33 "Qualifying Younger Resident"** means a person who is not younger than 50 years of age and who has not yet reached 55 years of age.

**Section 1.34 "Qualifying Permanent Resident"** means a person 19 years of age or older who was cohabiting with the Qualifying Resident before the Qualifying Resident's death, hospitalization, or other prolonged absence of, or the dissolution of marriage; and

A. he or she was a spouse, a cohabitant, or providing primary physical or economic support to the Qualifying Resident; and

B. he or she has an Ownership interest in, or is in expectation of an Ownership interest in, a Lot, and

C. Occupancy by such person will not cause the Property to fail to qualify for the housing for older persons exemption under the Federal Fair Housing Act and A.R.S. §41-1491.04.

**Section 1.35 "Rules"** refer to the policies and procedures adopted by the Board which govern the conduct and actions of owners, tenants, visitors and guests on the Lots and the Common Areas and which are not otherwise covered in the Governing Documents.

**Section 1.36 "Self Help"** refers to the right of the Association, after notice to the pertinent Owner and an opportunity to cure, to enter upon any Lot, exclusive of the interior of the Dwelling Unit on the Lot, to correct any violation of the Governing Documents and charge the Owner for the costs thereof, which becomes a Reimbursement Assessment against the Lot and the personal obligation of the Owner of the Lot.

**Section 1.37 "Sewer Lift Station"** means any sewer pump station and related facilities used in connection with the sewer facilities serving the Property.

**Section 1.38 "Structure"** means that which is built or constructed, or any piece of work artificially built or composed of parts joined together in a definite manner, the use of which requires more or less permanent or temporary location on the ground, or which is attached to something having a permanent or temporary location on the ground or bottom of any body of water. The term will be construed as if followed by the words "or part thereof."

## ARTICLE II MEMBERSHIP

**Section 2.1 Membership.** Every Owner is a Member. The terms and conditions in this Declaration are binding on all Owners and are not exclusive. All Owners also are subject to the provisions of the other Governing Documents to the extent the provisions are not in conflict with this Declaration. Membership in the Association is appurtenant to and may not be separated from the interest such Owner has in any Lot. Ownership of a Lot is the sole qualification for membership; provided, however, a Member's voting rights or privileges to use the Common Areas, may be suspended as provided in the Governing Documents.

**Section 2.2 Transfer.** Membership will not be transferred, pledged or alienated in any way, except that such membership is automatically transferred to the Owner of any a Lot. Any attempt to make a prohibited transfer of the Membership is void and will not be reflected upon the books and records of the Association. The Association has the right to record the transfer in the books of the Association without any further action or consent by the transferring Owner.

**Section 2.3 Voting.** Each Owner is entitled to one vote for each Lot owned within the Property. When more than one individual or entity holds an interest in any Lot, the vote for that Lot shall be exercised as agreed upon by the owners, but in no event shall more than one vote be cast for any one Lot. If the owners of a Lot cannot agree on how to cast any vote, they will lose their right to vote on the matter in question.

**ARTICLE III  
COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 3.1 Creation of the Lien and Personal Obligation to Pay Assessments.** Each Owner, upon recordation of a deed to a Lot, whether or not it is stated in the deed, covenants and agrees to pay the following Assessments to the Association: Regular Assessments, Special Assessments, Reimbursement Assessments and Capital Improvement Assessments.

A. The Assessments, together with interest, late charges, attorney fees, collection and court costs are a lien on the Lot against which each such Assessment is made and, if not paid, can be foreclosed in accordance with the procedures set forth in Article IV.

B. All Assessments, together with such interest, late charges, collection and court costs and attorney fees, are also the personal obligation of the Owner of such Lot at the time the Assessment became due.

**Section 3.2 Purpose of Assessments.**

A. General Purposes. The Assessments imposed by the Association will be used exclusively for fulfilling the purposes set forth in the Governing Documents or for the furtherance of any other duty or power of the Association.

B. Assessments for Retained Infrastructure, Maintenance of Entry Boulevard and Lift Station, Etc. The Regular Assessment will include amounts to be used by the Association to (1) pay ratable or proportionate assessments or charges to the appropriate communities facilities district or other entity in relation to the operation and maintenance of the Retained Infrastructure (as defined in the Amended and Restated Development Agreement and Intergovernmental Agreement [Red Hawk Canyon], dated January 27, 1995, and recorded in Docket 9969 at Page 1923, office of the Pima County Recorder (the "Development Agreement"), including costs of administration; or relating to the maintenance, repair and replacement of landscaping, lighting, irrigation, sidewalks, utilities and other amenities associated with the main entry road leading to the Property (Red Hawk Boulevard) from Tangerine Road, or as otherwise provided in the Development Agreement; and to (2) pay a pro-rata share of the cost of the operation, maintenance, repair and replacement of any Sewer Lift Station serving the Property as provided herein. Such items will be a part of the Common Expenses.

The Association may execute such assumption agreements or other agreements as may be appropriate to pay its pro-rata shares of such items, or to pay assessments or charges that may properly be chargeable to the Association or its Members. To the extent of the ratable or proportionate share applicable to the Property, the Association assumes and agrees to pay the costs of operation and maintenance of the Retained Infrastructure, it being acknowledged that the Declarant and its beneficiary are to be released and absolved of liability under the Development Agreement relating thereto. This assumption has specific reference to Sections 9.2 and 12.1 of the Development Agreement.

### **Section 3.3 Regular Assessments.**

A. Regular Assessments. At least annually, the Board will determine the amount and frequency of the Regular Assessment to be paid by each Member and each Member will pay the Association such Regular Assessment in installments established by the Board. Each installment will be due and payable on a date established by the Board in a written notice sent to Members. In the absence of such written notice, the amount of the Regular Assessment will remain the same as the previous year's Regular Assessment until such time as the Board determines that a different amount is due and payable.

B. Increases in Amount of Regular Assessment. If the Board determines that the Regular Assessment will be inadequate to pay the Common Expenses for any reason, then it will immediately determine the approximate amount of such inadequacy and provide each Owner with the revised Regular Assessment and the due dates for payment thereof. The Regular Assessment may not be increased more than 20% over the amount of the previous fiscal year's Regular Assessment without the approval of a majority of the Owners of the Association (or in compliance with any other voting requirements set forth in A.R.S. §33-1803 of the Act, as amended from time to time).

C. Decreases in Amount of Regular Assessments. If the amount budgeted to meet the Common Expenses for the current year proves to be excessive in light of the actual Common Expenses, the Board, in its sole discretion may either reduce the amount of the Regular Assessment remaining for the balance of the fiscal year, or may abate collection of Regular Assessments as it deems appropriate.

**Section 3.4 Capital Improvement Assessments and Special Assessments.** In addition to the Regular Assessments, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the costs of any construction or replacement (other than due to destruction as provided in Article VIII) of any capital improvements in the Common Areas, including any necessary fixtures and personal property.

The Board may levy Special Assessments for any of the following purposes: (1) constructing capital improvements in the Common Areas; (2) correcting an inadequacy in the current operating account; or (3) paying for such other matters as the Board deems appropriate. The Board will determine the due date of any Special Assessment. Without a vote of the Members, only one Special Assessment or Capital Improvement Assessment may be levied each year, but the Board may levy both a Special Assessment and a Capital Improvement Assessment in any one year.

The Board will not impose either a Capital Improvement Assessment or a Special Assessment which exceeds 20% of that year's Regular Assessment on a per Lot basis, without the

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written approval of a majority of a quorum<sup>1</sup> of the voting power of the Association; provided, however, that the Board may impose a Special Assessment which exceeds the 20% limitation without the approval of the Members, if: (A) an extraordinary expense required by court order arises; or (B) an extraordinary expense necessary to repair or maintain the Property and/or Common Areas, arises, where a threat to the safety of persons or property is discovered. Any reserves collected as part of the Regular Assessments by the Association for the future maintenance and repair of the Common Areas will not be included in determining whether the Capital Improvement Assessment or the Special Assessment exceeds 20% of that year's Regular Assessment. The Association will provide notice to all Owners, by first-class mail, of the amount of any Capital Improvement Assessment or Special Assessment, not less than 30 nor more than 60 days prior to the due date for such Assessment.

**Section 3.5 Reimbursement Assessment.** Reimbursement Assessments may be levied by the Board to reimburse the Association for materials or services provided by the Association which benefit individual Lots. Reimbursement Assessments also will be levied by the Board against an Owner (and his/her Lot) to reimburse the Association for any other charge designated as a Reimbursement Assessment in the Governing Documents. The Association will provide the Owner of notice of the Board's decision to impose a Reimbursement Assessment by first-class mail not less than 30 nor more than 60 days before the Reimbursement Assessment is due. In addition, if the Board levies any fines or imposes charges against an Owner who fails to comply with the Governing Documents, those fines or charges are Reimbursement Assessments, although fines may only be collected according to the provisions of the Act.

**Section 3.6 Uniform Rate of Assessment; Declarant Exempt.** Assessments (other than the Reimbursement Assessments) will be set at a uniform rate for all Lots, except that Declarant shall not be responsible for payment of any Assessments of any nature whatsoever on Lots that it owns, and all Lots owned by Declarant shall be exempt from any and all Assessments. The Association has financial obligations to the Declarant pursuant to an Agreement, which was recorded on March 17, 2005, in Docket 12511 at page 4037, office of the Pima County Recorder. The repayment terms and obligations of the Association pursuant to Section 3.17 of the Original Declaration are replaced by the terms of the said Agreement of March 17, 2005.

**Section 3.7 Certificate of Payment.** Upon a written request, the Association will provide any Owner with a written certificate signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates will be conclusive evidence of payment of any Assessment which is stated as having been paid.

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<sup>1</sup>The quorum shall be as set forth in the Bylaws of the Association. As of the date of this Declaration, the quorum is 25%; therefore, the affirmative vote of a majority of 25% of the Membership is necessary for the levy of a Capital Improvement Assessment or a Special Assessment which exceeds 20% of a year's Regular Assessment.



**Section 3.8 Exempt Property.** All Common Areas, the Golf Course Property, and properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority will be exempt from the payment of Assessments.

**Section 3.9 No Offsets.** All Assessments must be paid in the amount specified by the Association. No offsets against such amount are permitted for any reason and no Owner is exempt from liability for the payment of Assessments because he/she does not use or enjoy the Common Areas, has abandoned his/her Lot, or for any other reason, including any allegation that the Board is not performing its obligations under the Governing Documents.

**Section 3.10 Homestead Waiver.** Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

**Section 3.11 Reserves.** The Regular Assessments will include reasonable amounts as determined by the Board, in its sole and absolute discretion, as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas, or for any other purpose as determined by the Board to be in the best interests of the Members. The Board may but need not employ special consultants or experts to advise in its deliberations concerning reserves.

**Section 3.12 Capital Contribution.** Each Purchaser of a Lot will make a Capital Contribution to the Association's operating account. The amount of the Capital Contribution will be determined by the Board, in its sole discretion, from time to time, and shall be uniform as to all Lots. This amount will be deposited by the Buyer into escrow and disbursed to the Association, if the sale is handled by an escrow agent, or paid directly to the Association, if the sale is solely between the Seller and the Buyer and no escrow agent is used to handle the transaction. Funds paid to the Association pursuant to this Section may be used by the Association for the operating expenses of the Association or for any other purposes permitted under the Governing Documents. Payments made pursuant to this Section are not refundable and will not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

#### **ARTICLE IV NONPAYMENT OF ASSESSMENTS**

**Section 4.1 Effect of Nonpayment of Assessments; Remedies of the Association.** If any Assessment is not paid when due, such Assessment is delinquent and in default. The Association has the right and power to bring all actions at law and in equity and exercise such other remedies against the delinquent Owner for the collection of delinquent Assessments. In the event the Association employs an attorney to collect any delinquent Assessment, whether or not a lawsuit is filed, each Owner agrees to pay reasonable attorney fees, litigation expenses, collection costs, and any other costs incurred in addition to any other amounts due or any other relief or remedy obtained against that Owner. In addition to any other remedies available to the Association, the Association may enforce the obligations of any Owner to pay the Assessments in any manner provided by law or in equity, and, without any limitations, by any or all of the following procedures:

A. Suspension of Rights; Monetary Penalties. After a hearing by the Board (whether or not the delinquent Owner appears), upon 10 days prior written notice to the delinquent Owner, the Board may (1) suspend the voting rights of any Owner, and/or (2) suspend such Owner's right to use the recreational components of the Common Areas for any period during which any Assessment against such Owner's Lot remains unpaid.

B. Enforcement by Suit. The assessment obligation may also be enforced by filing a lawsuit, at law or equity, brought in the name of the Association against any Owner or prior Owner. Any judgment rendered in any such action may include the amount of the delinquency, interest on the delinquency in an amount established from time to time by the Board, court costs, litigation expenses, collection and other costs and reasonable attorney fees, in an amount determined by the court.

C. Enforcement by Lien. The Association's lien for any unpaid assessment arises when any Assessment is not paid within fifteen days of its due date. As more fully provided in A.R.S. §33-1807 of the Act, the recording of this Declaration constitutes record notice and perfection of the Association's lien. The Association is not required to record a lien, but may do so to provide notice to third parties of its interest in the Lot. Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or transfer of a Lot does not affect the Association's lien. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages. The lien for assessments is prior and superior to all other liens, except: (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (2) the lien of any mortgage or deed of trust which is recorded before the date this Declaration was recorded.

## ARTICLE V ARCHITECTURAL CONTROL

**Section 5.1 Appointment of Architectural and Landscape Committee.** The ALC shall be a standing committee of the Association. The Board will appoint members to serve on the ALC in accordance with the procedures set forth in the Bylaws. The number of members on the ALC will be determined by resolution of the Board. The Board also may appoint alternate members to the ALC to serve in the event that any regular member is absent. Persons appointed by the Board to the ALC must be Members of the Association.

**Section 5.2 Approval and Conformity of Plans.** No building, fence, wall, structure, landscaping or other improvements will be commenced, erected, maintained upon or removed from any Lot, nor will there be any addition to or change in the exterior of any Lot, building, fence, wall, structure, the painting (other than painting with the same color of paint as previously existed or approved) of exterior walls, doors, trim, patio covers and solar and other energy saving devices, except in compliance with plans and specifications approved by the ALC. Each Owner will submit at least two (or more if requested by the ALC) sets of plans to the ALC. In approving or denying plans, the ALC will consider the harmony of external design and location of the proposed improvement in relation to surrounding structures and topography and as to all other standards. The ALC has the sole discretion to approve and disapprove all plans, unless an appeal is made in accordance with Section 5.7

**Section 5.3 Architectural Requirements.** The following architectural standards apply to the construction of any Improvements and structures on the Lots:

A. Building Setback Area.

(1) No structure can be erected or constructed on any Lot within the following minimum setback areas:

(a) Front lot line cannot be less than 20 feet.

(b) The side lot lines for detached Dwelling Units must be five feet. In the case of a side yard abutting a street, the minimum setback is 10 feet. No side setbacks apply to the lot line on which the attached or zero lot line Dwelling units are joined, but does apply to the opposite lot line.

(c) The rear lot line is 15 feet.

(2) Except in the case of attached Dwelling Units, no bay windows, chimneys, balconies or other similar extended structures are permitted on, upon or over the building setbacks; provided, however, that the following extended structures are permitted on, upon or over the building setbacks:

(a) Building appurtenances such as window sills, decorative banding and other similar appurtenances that do not protrude more than 12 inches horizontally into a required building setback;

(b) Walls, fences, decks and similar structures not exceeding five feet in height;

(c) The eaves of the roof of the Dwelling Unit; and

(d) Air conditioners, pool pumps, sprinkler pumps, or other similar mechanical equipment, provided there is reasonable adequate shielding of the mechanical equipment so the equipment is not readily visible from any adjacent street or Common Area. The decision of what constitutes reasonably adequate shielding will be made by the Architectural Committee whose decision is final.

(3) Where two or more Lots are acquired and used as a single building site, the side Lot lines refer only to the lines bordering an adjoining Owner's property.

(4) Setbacks for corner Lots and odd-shaped Lots must be as nearly as possible as set out above, except that minor variations may be authorized by the Architectural Committee at the time plans are approved.

(5) No Dwelling Units exceeding two stories in height, or exceeding a

Building Height of 25 feet, measured from the finished grade of the Lot pad, can be erected or constructed on any Lot.

B. Minimum Dwelling Size. The minimum square feet of enclosed living area for any Dwelling Unit in the Property is 1,000 square feet. Garages, porches, patios, terraces, balconies and other similar structures will not be taken into account in calculating the minimum square footage of living area required.

C. Minimum Lot Sizes. The minimum square footage of any Lot on which an attached Dwelling Unit will be constructed is 4,000 square feet. The minimum square footage of any Lot intended for a detached Dwelling Unit is 5,500 square feet.

**Section 5.4 Architectural Standards.** The Board may, from time to time, adopt and promulgate Architectural Standards to be administered through the ALC. No revision to the Architectural Standards shall apply to any existing Improvement if such application would cause the existing Improvement to become non-conforming. Once adopted, the Architectural Standards become part of the Governing Documents of the Association and are enforceable in the same manner as the provisions of this Declaration. The Architectural Standards may include, but are not limited to, the following restrictions and limitations upon the Owners:

A. time limitations for the completion of the architectural improvements for which approval is required;

B. conformity of completed architectural improvements to plans and specifications approved by the ALC. To give notice to good faith purchasers and lenders of the noncompletion or nonconformance, the Association has the right to record a "Notice of Violation." The Notice must identify the Lot in violation and its Owner and specify the nature of the violation;

C. such other limitations and restrictions as the Board in its reasonable discretion adopts, including, without limitation, the regulation of the following: construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of any structure on the Lot;

D. reasonable Landscaping Design Guidelines which will specify minimum landscaping requirements for the Lots;

E. the color palette for walls, trim and roof must be a blend of compatible colors with subtle yet distinguishable variations among the Dwelling Units;

F. a description of the types of such construction, reconstruction, additions, alterations or maintenance which, if completed in conformity with the Architectural Standards, do not require the approval of the ALC; and

G. reasonable procedural rules governing the review of plans and specifications including, without limitation, the number of sets of plans to be submitted and fees payable by submitting Owners to cover the Association's costs of performing plan reviews and employing consulting architects, if any are in fact employed.

### **Section 5.5 General Provisions.**

A. Delegation of Review Responsibility. The ALC may in writing delegate its plan review responsibilities to one or more members of the ALC and may appoint various subcommittees to assist it in performing its functions under this Declaration. Upon such delegation, the approval or disapproval of plans and specifications by such persons will be equivalent to approval or disapproval by the entire ALC.

B. Compliance with Procedural Rules. Plans and specifications will not be deemed submitted unless the Owner has complied with the ALC's rules regarding submittals

C. Address. The address of the ALC is the same address as the address for giving notice to the Association. This is the location where all plans and specifications must be submitted and where the current Architectural Standards, if any, are kept.

D. Responsibility of Owners. The establishment of the ALC and the systems for architectural approval do not limit any Owner's duty to maintain, repair, alter or modify or otherwise control his/her Lot as required in the Governing Documents.

E. Failure to Approve Deemed Disapproval. If the ALC fails to approve or disapprove plans and specifications within 60 days after the plans were received by the ALC and are in accordance with the Architectural Standards or any rules regarding such submission adopted by the ALC, such plans and specifications are deemed disapproved.

**Section 5.6 Limitation of Liability.** The Board of Directors or the ALC may reject plans and specifications for their failure to comply with zoning or building ordinances or other governmental regulations or restrictions, or on the basis that such plans and specifications are defective or not prepared in accordance with sound engineering practices. Nevertheless, the approval of plans and specifications will not constitute a representation, warranty or guarantee that such plans and specifications comply with proper engineering or design principles, with zoning or building ordinances, or with any other governmental regulations or restrictions. By approving plans and specifications, neither the Board of Directors, the ALC, nor any of their respective members assume any liability or responsibility arising therefrom, or for any defect in the structure constructed from such plans and specifications. Any Owner submitting plans to the ALC, and any Owner, by acquiring title to any Lot, waives his/her claim for damages or other relief arising under the architectural review process established in this Declaration or by the Board of Directors. Neither the Board of Directors, the ALC, nor any of their respective members shall be liable for damages or otherwise to any person submitting requests or plans for approval, or to any other Owner of land subject to this Declaration, by reason of any action, mistake in judgment, negligence, failure to act, approval, disapproval or failure to approve or disapprove, with respect to any matter within their

jurisdiction in accordance with the terms of this Declaration.

**Section 5.7 Appeal.** If plans and specifications submitted to the ALC are disapproved, the Owner submitting the plans may appeal the decision in writing to the Board. The written request to the Board must be received not more than 15 days after the final decision of the ALC is sent to the Owner by first class mail, postage prepaid. The request for an appeal must set forth each and every basis on which the Owner believes the Board should overturn the decision of the ALC. The Board will submit the Owner's request to the ALC for its review and the ALC will provide its written recommendations to the Board. Within 45 days after receipt of the request for appeal, the Board will render its written decision. The failure of the Board to render a decision within 45 days will be deemed a denial of the appeal and an affirmation of the decision of the ALC.

**Section 5.8 Inspection and Recording of Approval.** Any member of the ALC or any officer, Director, employee or agent of the Association, may, at any reasonable time, without being guilty of trespass, enter on any Lot to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with the approved plans and specifications and in accordance with the Architectural Standards. Notice of the date and time of the inspection will be provided to the Owner at least 48 hours before the inspection. In the event that the ALC determines that the improvements on the Lot were not constructed in accordance with the approved plans, it will provide written notice to the Owner of the defects and provide the Owner with a time period by which the corrections must be made. If the Owner fails to make the necessary corrections, the matter will be referred to the Board for appropriate action, including taking enforcement action as provided in Article XVI.

**Section 5.9 Approval for Declarant Not Required.** Notwithstanding any other provisions of this Declaration, Declarant shall not be responsible to submit any plans or seek approval for structures, improvements or alterations the Declarant or its agents shall undertake on the Property. All of Declarant's Improvements are exempt from the provisions of this Article V. Only changes and revisions by Declarant's successors shall be subject to the submittal and other provisions of this Article V.

## ARTICLE VI DUTIES AND POWERS OF THE ASSOCIATION

**Section 6.1 General Duties and Powers.** In addition to the duties and powers enumerated in any of the other Governing Documents, the Association has the specific duties and powers specified in this Article.

**Section 6.2 Duties of the Association.** The Association, through the Board, has the duty and obligation to:

A. Pay assessments or charges to the appropriate communities facilities district or other appropriate entity for the maintenance of landscaping and other amenities associated with the main entry road leading to the Property (Red Hawk Boulevard) from Tangerine Road, and to assess its Members for all costs assumed or to be assumed by the Association pursuant to the

Development Agreement, as more specifically set forth in Section 3.2 above;

B. Pay assessments or charges to the appropriate entity for the costs of operating, maintaining, repairing, and replacing any Sewer Lift Station serving the Property, which assessments or charges will be determined by the owner and operator of the lift station, and to maintain and repair all reclaimed water distribution systems serving the Golf Course Property and Common Area, including appurtenant facilities, pumps, retention areas and the like;

C. Maintain and otherwise manage the following:

(1) all easements and real property and all facilities, improvements and landscaping thereon in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;

(2) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;

(3) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration. This includes, without limitation, maintaining the Common Areas; the Golf Course Property; and recreational facilities; according to reasonable standards adopted by the Board and as set forth in the Governing Documents. This maintenance obligation includes, but is not limited to, maintenance, painting, replacement and repair work as may be necessary; lawn maintenance on the Common Areas; clearing of dirt and debris from roadways and walkways as deemed appropriate by the Board; and maintenance of retention basins and similar water drainage systems;

D. Pay any real and personal property taxes, including ad valorem taxes and other charges assessed against the Common Areas or Golf Course Property, or otherwise payable by the Association;

E. Obtain, for the benefit of the Common Areas, water, gas and electric, refuse collections and other services;

F. Make the books and records available for the inspection of any Owner or the Owner's First Mortgagee during regular business hours, provided that the Association has been given at least 10 days prior written notice of an Owner's desire to make such an examination.

G. Provide that any gatehouse for the Property will be staffed on such frequency as the Board in its sole discretion determines;

H. Grant and obtain easements, licenses and other property rights with respect to contiguous lands;

I. Investigate, hire, pay, supervise and discharge the personnel necessary to be employed, and provide the equipment and materials necessary to properly maintain and operate the

Common Areas as contemplated by this Declaration;

J. Establish and contribute funds and resources to nonprofit companies which are designed to provide services to Owners; and

K. Take any necessary action as may be necessary to promptly comply with all orders or requirements affecting the Common Areas maintained by the Association, as required by any federal, state, County or other municipal authority having jurisdiction.

**Section 6.3 Powers of the Association.** The Association, through the Board, has the power but not the obligation to:

A. Employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent has (i) a term of not more than one year with successive one year renewal periods upon mutual agreement of the parties, and (ii) gives the Board the right to terminate the contract without cause or penalty upon at least 30 days notice, and for the managing agent to terminate the contract without cause or penalty upon at least 90 days notice;

B. Employ any person, firm or corporation to repair, maintain and renovate the Common Area, lay pipes or culverts; to bury utilities; to put up lights or poles; to erect signs and traffic and safety controls of various sorts on the Common Area;

C. Employ and obtain advice from persons, firms or corporations such as, but not limited to, landscape architects, architects, engineers, lawyers and accountants;

D. Acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Property, the administration of the affairs of the Association or for the benefit or enjoyment of the Members;

E. Borrow money in a total amount not to exceed 10% of the then existing estimated annual Common Expenses, as may be needed in connection with the discharge by the Association of its powers and duties. Amounts exceeding 10% of the then existing estimated annual Common Expenses may be borrowed by the Association if approved by 2/3rds of the votes cast in a duly-held Association where the quorum requirement has been met;

F. Establish in cooperation with the City or the County a special tax assessment district or other public works district for the performance of all or a portion of the maintenance or other functions now within the responsibility of the Association;

G. Convey all or a portion of the Common Areas to any district established pursuant to Subsection (f) above;

H. Establish and maintain a working capital and contingency fund in an amount



to be determined by the Board. Such resulting contributions will be a Common Expense and will be used by the Board as it deems fit to carry out the objectives and purposes of the Association;

I. Negotiate and enter into contracts with Mortgagees and mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Property;

J. Invest and reinvest monies, sue and be sued; collect interest, dividends, and capital gains; exercise rights; pay taxes; make and enter into contracts; enter into leases or concessions; make and execute any and all proper affidavits for various purposes; compromise any action without leave of court; and all other powers contained herein, and those necessary and incidental thereto;

K. Purchase or lease or otherwise acquire in the name of the Association or its designees, corporate or otherwise, on behalf of all Members, Lots offered for sale or lease or surrendered by their Owners to the Board;

L. Purchase Lots at foreclosure or other judicial sales in the name of the Association or its designees, corporate or otherwise, on behalf of all Members;

M. Sell, lease, mortgage (but not vote the votes appurtenant thereto) or otherwise deal with Lots acquired by the Association, and sublease such Lots leased by the Association or its designees, on behalf of all Members;

N. Bring and defend actions by or against one or more Lot Owners pertinent to the general welfare of the Members;

O. Create, appoint members to and disband such committees as will from time to time be deemed appropriate or necessary to aid the Board in the discharge of its duties, functions and powers;

P. Enforce the provisions of the Governing Documents by any appropriate means.

**Section 6.4 General Limitations and Restrictions on the Powers of the Board.** In addition to the limitations and restrictions enumerated in the Governing Documents, the Board is prohibited from taking any of the following actions without the approval of a majority of a quorum of the voting power of the Association:

A. Enter into contracts for materials or services which have a term in excess of one year, with the following exceptions:

- (1) a contract with a public utility company;
- (2) personal service contracts, including but not limited to retainer

agreements with legal counsel or accountants;

(3) prepaid casualty and/or liability insurance policies which have a term of more than three years, provided that the applicable policy permits short rate cancellation by the insured;

(4) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services which have a term of more than five years; and

(5) agreements for cable television services and equipment or satellite television services and equipment which have a term of more than five years.

B. By act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Area and facilities owned by the Association without the prior written approval of two-thirds of all the Members of the Association, except that the Association has the right at all times to grant easements over the Common Area for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (i) roads, streets, walks, pathways and driveways; (ii) temporary overhead or permanent underground lines, cables, wires, conduits or other devices for the transmission of electricity for lights, heating, power, telephone, cable TV and other purposes; (iii) sewers, storm drains and pipes, drainage easements, water systems, water heating and gas lines or pipes; and (iv) such other improvements as may be provided in this Declaration or be deemed advisable in the sole discretion of the Board; and

C. Pay compensation to Directors or to Officers of the Association for services performed in conducting the Association's business; provided, however, the Board may reimburse a Director or Officer for expenses incurred in carrying on the business of the Association.

#### **Section 6.5 Association Rules and Rules Regarding Fines.**

A. Adoption of Rules. The Board has the exclusive power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules") including, but not limited to, rules and regulations governing use of the Golf Course (the "Golf Course Rules") and requiring the payment of dues and/or assessments. The Association Rules will govern the use and occupancy of the Lots and the Common Areas and such other matters as determined by the Board. The Association Rules may not discriminate among Owners, and cannot be inconsistent with the other Governing Documents. The Association Rules have the same force and effect as this Declaration and are binding on the Owners and their successors in interest whether or not a copy of the Association Rules have actually been received by the Owner. Upon the request of an Owner or the First Mortgagee, a copy of the Association Rules, if any, as adopted, amended or repealed, will be available at the principal office of the Association. If there is a conflict between the Association Rules and the other Governing Documents, the provisions of the other Governing Documents prevail to the extent of any such conflict.

B. Fines and Penalties. The Association Rules may establish a system of fines and penalties enforceable as Reimbursement Assessments. If any Owner, his/her family or any

licensee, invitee, tenant or lessee violates the Governing Documents, the Board may levy a fine upon the Owner for each violation, after having provided notice of the violation and an opportunity for a hearing before the Board or any Committee designated by the Board to act as the Hearing Panel. However, each day that a violation continues after written notice to cease has been mailed to the Owner, may be considered a separate violation.

**Section 6.6 Delegation of Powers.** The Association has the right to delegate, in writing, any of its duties and powers under the Governing Documents, to committees, officers, employees or agents; provided, however, no such delegation relieves the Association of its obligation to perform such delegated duty.

**Section 6.7 Emergency Powers.** The Association or any person authorized by the Association may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry will be made with as little inconvenience to the Owners as practicable, and any damage caused thereby will be repaired by the Association unless covered by insurance carried by the Owner.

**Section 6.8 Declarant's Right to Appoint and Remove Directors.** Declarant shall have the right to appoint and remove directors, at any time, so long as it owns a single Lot. The number of directors on the Board shall not exceed seven.

## ARTICLE VII REPAIR AND MAINTENANCE

**Section 7.1 Repair and Maintenance by Association.** Except to the extent that an Owner may be obligated to maintain and repair the Lot, and without limiting the generality of the duties and powers contained in the Governing Documents, the Association has the duty to accomplish the following in such manner and at such times as the Board prescribes:

A. Maintain, repair, restore, replace and make necessary improvements to the Common Areas and any other areas over which the Association has control and maintenance responsibilities pursuant to the Governing Documents [see 6.2(C)];

B. Maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of a majority of the voting power of the Members;

C. Pay the costs of any such maintenance and repair pursuant to this Section out of the general funds of the Association, except when the costs are to be paid by any particular Owner;

D. Maintain, repair and replace those portions of the Perimeter Walls which face outside of the Heritage Highlands development and those portions of the Common Area walls facing the Common Areas, including the Golf Course Property.

E. Provide, in its sole discretion, for a method of maintaining the open space and/or recreation areas along all walkways, constructed within the Property, and any equipment or facilities therein, to the extent such maintenance obligations are necessary.

**Section 7.2 Repair and Maintenance by Owner.** Each Owner must maintain his/her Lot, including the improvements on the Lot, in a clean and attractive condition. Without limiting the generality of the foregoing, the Owner must:

A. Keep his/her Lot free from rubbish, litter and noxious weeds;

B. Maintain, cultivate and keep in good condition and repair all landscaping located upon the Lot in compliance with any applicable City and County ordinances, including landscaping planted in areas between the sidewalks and street curbs;

C. Trim and restrain all trees, shrubs or plantings of any kind so that they will not be an eyesore or create a nuisance, nor overhang or otherwise encroach upon any adjacent Lot, sidewalk, or street, all in accordance with the Association Rules;

D. Maintain in good condition and repair and adequately painted or otherwise finished all improvements located on a Lot;

E. Maintain all paved surfaces and keep them clean, reasonably dry and free of oil and other extraneous matter.

F. Maintain all improvements on the Lot in good condition and repair, including without limitation, all utility lines or pipes that provide service to the Lot;

G. Maintain in good and attractive condition all yard and patio walls or fences associated with the Owner's Lot including:

(1) that portion of any Perimeter or Common Area Wall which faces into the Lot;

(2) the walls between the Lots which are located solely on the Lot, including the wrought iron fencing;

(3) if the wall or fence is a common wall, i.e., a wall on the dividing line between two Lots, then the rules pertaining to party walls will apply. The Owner will cooperate with the Owner of any adjacent Lot with whom the Owner shares a common wall, as to the maintenance and repair of such wall, as set forth in Article XII.

H. Repair in Event of Casualty. In the event that any residence on a Lot is damaged by fire or other casualty, the Owner will, within 180 days thereafter, either begin rebuilding the residence or have the residence demolished;

I. Repayment of Association for Repairs Necessitated by Owner. If the Association incurs any expenses for repairing or maintaining the Lot, which expenses are incurred as a result of the negligent or willful acts of an Owner, the Owner's family, guests or tenant, then the amount incurred will be charged against the Owner as a Reimbursement Assessment.

**Section 7.3 Right of Association to Maintain and Install.** If an Owner fails to maintain or repair any portion of the Lot as required in the Governing Documents, the Association, after giving the Owner 10 days notice within which the Owner has to cure the deficiencies on the Lot, has the right to provide such maintenance and repair and to charge any expenses incurred by the Association against the Owner as a Reimbursement Expense.

**Section 7.4 Standards for Maintenance and Installation.**

A. Maintenance of the exterior of the Lots , including without limitation walls, fences and roofs, will be accomplished in accordance with the Architectural Standards and, if none are adopted, then according to the requirements of the ALC.

B. All portions of the yard of a Lot which are unimproved and visible from the street, Common Area, or Golf Course Property will be landscaped by the Owner using customary landscaping materials, primarily living plants, trees and shrubs. In addition, all rear yards visible from neighboring Lots or the Common Areas, must be landscaped by the Owner. Subject to all approvals and the Architectural Standards and any submittals required thereunder, landscaping of the Lot must be installed within 90 days from the date the Lot was conveyed by the Declarant to the Owner. The ALC may adopt approved plant lists and plant types, may disapprove certain plants, and may require that all landscaping conform to standard patterns, plant types, ground cover, irrigation requirements and like conditions. The ALC may grant extensions of such period as a result of weather conditions and seasonal constraints on landscape installation. If an Owner does not complete his/her landscaping within this 90-day period (or in the event an extension is granted, prior to the expiration of such extension period), the Association is authorized to install the landscaping (under a standard plan if the Owner has not obtained approval of a plan or if landscaping under the approved plan would be more costly) and charge such costs to Owner as a Reimbursement Assessment. Approved landscaping after installation must be maintained as required to provide a neat and attractive appearance. The Association has the right to require any Owner to landscape and/or maintain landscaped areas, or to maintain natural areas in their natural state on any right-of-way between a Lot and a sidewalk, street, or path which is immediately adjacent to such Lot. The Association also has the right, by agreement with the Owners, to maintain parts of Lots directly adjacent to public or private rights-of-way at the expense of the Association when the Board determines that it is to the benefit of its Members that the Association accept such responsibility. The Board may maintain an Owner's Lot at such Owner's cost if the Owner fails to perform such maintenance. Any Owner who changes the existing grading or drainage established by the Declarant will be strictly liable for all costs and expenses of repairing such changes, and any costs, liabilities, damages or causes of action arising out of such changes.

All landscaping and maintenance required in relation to landscaping or improvements upon

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any Lot will be the sole responsibility of the Owner.

Each Owner acknowledges that each Lot must contain an automated underground landscape irrigation system of sufficient size and capacity to irrigate sodded and landscaped areas and agrees that such underground landscape irrigation system will be installed within the 90-day period within which the Lot must be landscaped.

**Section 7.5 Right of Entry.** The Association has the right to enter upon any Lot in connection with any exterior maintenance, repair or construction in the exercise of the powers and duties of the Association. Any damage caused by such entry will be repaired by the entering party to the extent that the damage caused was unnecessary under the circumstances to carry out the Association's rights and obligations.

**Section 7.6 Maintenance of Public Utilities.** Nothing contained herein will require or obligate the Association to maintain, replace or restore the facilities of public utilities that are located within easements in the Common Areas owned by such public utilities, nor any private sewer lines or other items serving any Lot. However, in the case of Common Areas, the Association will take such steps as are necessary or convenient to ensure that such facilities within easements located thereon are properly maintained, replaced or restored by such public utilities.

**Section 7.7 Limitation of Liability for Controlled Access Gates.** The Association has installed and maintains controlled access gates along certain private roads within the Property. Such gates may be operated by key card, code, or other suitable entry access. Neither the Association, nor any committee of the Association, nor any officer, employee, agent or representative of the Association is liable for any loss, damage, injury or death caused or allegedly caused as a result of any breach of privacy, or as a result of any criminal or wrongful act. Each Owner, by taking title to a Lot, understands and acknowledges that neither the Association, nor any other person or entity is responsible for averting such injury or loss. Each Owner, and all guests, invitees, tenants and other occupants of the Properties acknowledge and assume the risk of injury or loss, and recognize that controlled access facilities, such as limited access roads and gated entries, are merely deterrents and not absolute measures that prevent loss or injury.

## ARTICLE VIII INSURANCE

**Section 8.1 Types.** The Association, to the extent reasonably available and reasonably priced, will obtain and continue in effect in its own name the following types of insurance with such deductible provisions as may be appropriate so long as such amounts or type of insurance coverage are not, in the discretion of the Board, prohibitively expensive or no longer necessary or appropriate for the protection of the Property, the Association and the Members:

A. A comprehensive policy of public liability insurance covering the Common Areas with a limit of not less than \$3,000,000 for claims for personal injury, death and/or property damage arising out of a single occurrence. Such coverage shall include protection against water damage liability, liability for non-owned and hired automobile and liability for property of others,

and such other risks as will customarily be covered with respect to similar Planned Communities in the area of the Property. Such coverage also shall contain a "severability of interest" endorsement or the equivalent, which will preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners; and shall further name as either an insured or as an additional insured, each member of the Board, the managing agent, the manager, and each Member; and shall also insure cross liability claims of one insured against another.

B. A policy of fire and casualty insurance (all-risk) with extended coverage for the full replacement value of the Common Areas (including all building service equipment and the like), without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Members and the Association and persons upon the Property with the permission of a Member. Such insurance will afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as will customarily be covered with respect to similar planned unit developments in the area of the Property. Prior to obtaining any policy of insurance under this subsection, or any renewal thereof, the Board will obtain an estimate or appraisal of the full replacement value of the improvements upon the Common Area, without deduction for depreciation, for the purposes of determining the amount of insurance to be affected pursuant to this subsection.

C. Fidelity coverage against dishonest acts on the part of Directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds will name the Association as obligee, and will be written in an amount based upon the business judgment of the Board, which amount will not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, the management agent, or the employees and agents of either, as the case may be, at any given time during the term of each bond. Any such coverage will contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee," agent, independent contractor or similar expression; and

D. Individual insurance for Officers and Directors of the Association for claims against such officers and Directors for liability arising from their negligent acts or omissions while acting in the capacity of officers or directors of the Association, with policy limits and deductible amounts to be determined in the sole discretion of the Board.

**Section 8.2 Waiver by Members.** All insurance obtained by the Association will be maintained by the Association for the benefit of the Association, the Owners and the Mortgagees as their interests may appear. As to each of these policies which will not be voided or impaired thereby, the Owners waive and release all claims against the Association, the Board, other Owners, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

**Section 8.3 Other Insurance.** The Board may purchase and maintain in force demolition insurance in adequate amounts to cover demolition in the event of total or partial destruction of the

Common Area, as well as a policy of flood insurance covering all insurable improvements upon Common Area. The Board will also purchase and maintain worker's compensation insurance, to the extent that the same will be required by law, for all employees of the Association. The Board will also purchase and maintain in effect such insurance on personal property owned by the Association, and such other insurance, as it deems necessary.

**Section 8.4 Premiums, Proceeds and Settlement.** Insurance premiums for any such insurance coverage obtained by the Association and any other insurance deemed necessary by the Association will be a Common Expense to be included in the Regular Assessments levied by the Association. Casualty insurance proceeds will be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as herein. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures will be binding on the Members.

**Section 8.5 Annual Insurance Review.** The Board will annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Property in light of increased construction costs, inflation, practice in the area in which the Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the association. If the Board determines that increased coverage or additional insurance is appropriate, it will obtain the same.

**Section 8.6 Notice of Expiration Requirements.** If available, each of the policies of insurance maintained by the Association will contain a provision that said policy will not be canceled, terminated, materially modified or allowed to expire by its terms, without 10 days prior written notice to the Board and to each Owner and mortgagee, insurer and Guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other person in interest who requests such notice of the insurer. In addition, fidelity bonds will provide that they may not be canceled or substantially modified without 10 days prior written notice to the Association and to each Eligible Mortgage Holder who has filed a written request with the carrier for such notice.

**Section 8.7 Federal Requirements.** Notwithstanding the foregoing provisions of this Article, the Association will continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by any of the Federal Agencies, so long as either is a Mortgagee, Owner, or insures or guarantees a Mortgage within the Property, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

**Section 8.8 General Requirements for Insurance Policies.** To the extent commercially obtainable at a reasonable cost, all policies will: (a) provide that adjustments of loss will be made by the Board and that the net proceeds thereof will be payable to the Board; (b) to the extent obtainable contain waivers of subrogation and waivers of any defense based on coinsurance or of invalidity arising from any acts of the insured; (c) provide that such policies may not be cancelled



without at least 30 days prior written notice to all of the named insured, including all Owners and Eligible Mortgage Holders; (d) provide that insurance coverage obtained and maintained may not be brought into contribution with insurance purchased by their mortgages; (e) provide that coverage must not be prejudiced by (I) any act or neglect of the Owners when such act or neglect is within control of the Association or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control; (f) provide that all policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Lot and/or their respective agents, employees or tenants, and of any defenses based on co-insurance or on invalidity arising from the acts; (g) will provide, in all policies of property insurance, that despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such option will not be exercisable without the prior written approval of the Board; (h) will provide that all insurance policies maintained by the Association will be for the benefit of the Association and the Owners and their mortgagees, as their respective interest may appear and will provide that all proceeds payable as a result of a casualty losses will be paid to the Association. An Officer designated by the Board will hold such proceeds for the benefit of the Association, the Owners and their respective mortgagees in accordance with the provision of the terms of this Declaration. Any insurance maintained by the Board may provide for such deductible amount as the Board may determine to be in the best interest of the Association and the Members. The premiums for all insurance and fidelity bonds carried by the Association will be a Common Expense.

In no event will the Association be required to provide liability or property damage insurance for any Owner with respect to Lots or improvements thereon. Such insurance, including fire and casualty insurance, and any personal property insurance, will be the responsibility of the Owner of each Lot.

**Section 8.9 Payment of Deductible.** In the event that any Owner, that Owner's family, guests or tenants, by their negligent or intentional acts, causes any claim to be made on the Association's insurance policy, that Owner will be liable for the payment of any deductible portion of the Association's insurance policy which covers the loss incurred. This amount will be charged against the Owner as a Reimbursement Assessment.

## ARTICLE IX DESTRUCTION OF IMPROVEMENTS

**Section 9.1 Duty of Association.** In the event of partial or total destruction of improvements upon the Common Areas, it will be the duty of the Association to restore and repair same as promptly as practical pursuant to this Article. The proceeds of any casualty insurance maintained pursuant to this Declaration will be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

**Section 9.2 Automatic Reconstruction.** In the event that the amount available from the proceeds of such insurance policies for such restoration and repair will be at least 85% of the estimated cost of restoration and repair, a Capital Improvement Assessment, with each Owner contributing a like sum, will be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose,

and the Board will cause the damaged or destroyed Common Areas to be restored as closely as practical to its condition prior to the destruction or damage.

**Section 9.3 Vote of Members.** In the event that the amount available from the proceeds of such insurance policies for such restoration and repair will be less than 85% of the estimated cost of restoration and repair, the improvements will be replaced or restored unless at least two-thirds of all the Members vote to not replace or restore. If the Members do not disapprove such replacement or restoration, the Board will levy a Capital Improvement Assessment without a vote of the Members, with each Owner contributing a like sum, in order to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose, and the Board will cause the damaged or destroyed Common Areas to be restored as closely as practical to its former condition prior to the destruction or damage. In the event of a determination, as provided above, not to replace or restore the improvements on the Common Areas, the Common Areas will be cleared and landscaped for community park use and the costs thereof will be paid for with the insurance proceeds, and any deficiency may be raised by Special Assessments in an amount determined by the Board.

**Section 9.4 Excess Insurance Proceeds.** In the event any excess insurance proceeds remain, after any reconstruction by the Association pursuant to this Article, such excess proceeds will be placed in the operating or reserve account, as determined in the discretion of the Board, and used for the future payment of Operating Expenses or for any other purpose as determined by the Board.

## ARTICLE X EMINENT DOMAIN

**Section 10.1 Definition of Taking.** The term "taking" as used in this Article will mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

**Section 10.2 Representation by Board in Condemnation Proceedings.** In the event of a threatened taking of all or any portion of the Common Areas, the Members appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board will act in its sole discretion with respect to any awards being made in connection with the taking and will be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

**Section 10.3 Inverse Condemnation.** The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article will apply with equal force.

**Section 10.4 Award for Common Areas.** Any awards received on account of the taking of Common Areas will be paid to the Association. 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 Members. The rights of an Owner and the Mortgagee of his/her Lot as to any pro rata distribution will be governed by the provisions of the Mortgage encumbering such Lot.

**ARTICLE XI  
USE RESTRICTIONS**

**Section 11.1 Age Restrictions.** It is intended that the Property is housing for older persons as defined in the Fair Housing Amendments Act of 1988 (42 USC 3601 et seq.). That Act requires that at least 80% of the Lots must be occupied by a person who is at least 55 years of age or older in order to maintain the Housing for Older Persons status and be exempt from familial discrimination. In furtherance of the Act, not less than 90% of the Lots will be occupied by at least one Qualified Resident and 10% of the Lots may be occupied by at least one Qualified Younger Person. All other persons residing on a Lot will be Qualified Permanent Residents; provided, however, that a person hired to provide live-in, long term or terminal health care to either a Qualified Resident or a Qualified Younger Person, for compensation, may reside on the Lot during any time that such person is actually providing this care. No person under the age of 19 years will reside on a Lot for more than 90 days in any calendar year.

Upon the death, dissolution of marriage, hospitalization or other prolonged absence of any Qualifying Resident, the Qualified Permanent Resident is entitled to continue living on the Lot so long as the Board determines, in its sole discretion that the continued occupancy of the Lot will not cause the Property to risk losing its status as housing for older persons. The decision of the Board is final and binding on all parties.

It is the obligation of each Owner, upon the sale or lease of the Lot, to ascertain whether the persons who will reside on the Lot are either Qualifying Residents or Qualifying Younger Residents and to obtain the permission of the Association to the sale or lease of the Lot to a Qualifying Younger Resident, such permission to be based solely upon the percentage of Lots which are already occupied by Qualifying Younger Residents. The Owner is responsible for providing verification of the age of the persons who will reside on the Lot to the Association within 10 days prior to the date of the transfer or effective date of the lease.

These occupancy restrictions apply to all residents occupying the Lot, regardless of whether the occupant is an Owner or Tenant.

At least once every two years and more often at the discretion of the Board, the Board will verify the age of the residents on the Lots by reliable surveys, affidavits and documentary evidence such as birth certificates, drivers licenses or passport. However, the Owners have the primary responsibility of ensuring compliance with the Housing for Older Persons exemption in the Fair Housing Act. It is the duty of each Owner to comply with these age restrictions and to provide appropriate notifications to the Association. Every Owner, by taking title to a Lot within the Property, acknowledges that the pattern of resales of lots can be difficult to control or predict and that compliance with these age restrictions depends upon the cooperation of all of the Owners as a whole.

**Section 11.2 Private Residential Purposes.** All Lots must be occupied and used solely for the private single family residential use of the Owner, his/her family, tenants and social guests and for no other purpose. No gainful occupation, profession, trade or other non-residential use can be conducted within the Property, except: (a) Until all Declarant-owned Lots are conveyed to third

party buyers, Declarant may maintain sales offices, construction offices and sales models on the Property (sales offices, sales models and construction offices utilized by the Declarant need not be owned by Declarant), and (b) an Owner may carry on a "Home Occupation", as provided below.

"Home Occupation" as permitted by this Section means private consultation and advice in trades and professions, and the sales or creation of art work, small wares and miscellaneous goods at a retail level, and includes consultation by professionals such as accountants, lawyers, and doctors, but no portion of the Property nor any dwelling unit can be used for the full-time general practice of any profession, nor as a lodge, regular club meeting place, religious institution, revivalist, cult or sect meeting place, nor may the interior of any dwelling unit be used for medical or surgical treatment or procedures.

A Resident may conduct a Home Occupation solely within the private confines of a residence so long as: (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 property; (c) the business activity does not involve frequent or annoying traffic by persons coming on the Lot who do not reside therein or door-to-door solicitation of residents in the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or hazardous or offensive use, nor threaten the security or safety of other residents of the Property.

No Home Occupation may involve heavy equipment or machinery, manufacturing, drilling, burning or conversion of any garage or carport into a business office or room.

No business conducted on a Lot may result in any change to the exterior appearance of any dwelling unit or Lot, and no business conducted will involve signs, buildings, or structures in addition to the dwelling unit.

The Board has the discretion to determine whether, in a particular case, the conduct of a Home Occupation violates the provisions of the Governing Documents. If such determination is made, the Board has the authority to require that the Home Occupation in question cease immediately.

The parking and storing of fire trucks and similar emergency vehicles either by a fire district or similar public district or agency is permissible with the written approval of the Board and will not be deemed a violation. Further, any carport, garage, awning or similar covering or enclosure for such vehicles may be of a permanent or temporary nature without in any manner constituting a violation of this Declaration.

**Section 11.3 Signs.** No Owner can display any sign or billboard of any kind on any portion of a Lot; provided, however, that a Member, or his/her real estate agent may display a sign on the Lot or any portion of the Common Area approved by the Board, which advertises the Lot for sale or lease so long as the sign complies with reasonable standards promulgated by the Board as to the size, color, shape or other qualification for permitted signs. The Board has the right to design a uniform sign offering property for sale or lease and to require that those signs be used in lieu of Realtor(s) or other signs. The Board may, in its discretion, require that signs be placed in

windows, rather than on front yards, may limit the sizes of "For Sale" signs and any other approved signs to sizes deemed least obtrusive and offensive to the character of the Property, and may promulgate Rules pertaining to the use of "Open House" signs. Notwithstanding the restrictions set forth in this Section, Owners may install a maximum of three signs which disclose that the Lot is protected by a security system. Such security signs may be placed on or around the Lot; provided, however, that such signs do not exceed dimensions approved by the Board. In addition, political signs are permitted provided they conform to the requirements in the Act.

**Section 11.4 Nuisance.** No noxious or offensive trade or activity can be carried on upon any Lot, or any part of the Property nor can anything be done which may be, or may become an annoyance or nuisance to the neighborhood, or which will in any way interfere with the quiet enjoyment of Owner, or which will in any way increase the rate of any insurance policy maintained by the Association.

**Section 11.5 Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, barn, storage building or shed or other outbuilding can be used on any Lot at any time, either temporarily or permanently.

**Section 11.6 Roofs.** Except as set forth in this Section 11.6, all dwelling units must have pitched roofs with a minimum pitch of 4:12. Deviations from the minimum pitch may be approved by the ALC for gambrel and similar type roofs. Pitched roofs must be constructed of flat or barrel cement or clay tile. Cedar shingle and asphalt shingle roofs are not permitted. The color of the roof material must be muted and consistent with the hues of the surrounding desert. No roof color can be changed by the application of paint or any other coating without the prior written approval of the ALC. Reflective roof surfaces which cause excessive glare and metal roofs are prohibited. Flat roofs may be utilized only if approved by the ALC and provided that the flat roof area does not comprise over 25% of the total roof area. Additionally, flat roofed areas may not be used for storage of any kind and must be maintained in a clean and well-kept manner.

**Section 11.7 Obstruction.** No Owner will obstruct the access by any duly authorized agent of the Association to the Common Area, nor will any Owner impair or obstruct any easement burdening such Owner's Lot without the express consent of the person in whose favor the easement runs and the consent of the ALC.

**Section 11.8 Waste.** No part of the Property can be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste will not be kept except in sanitary containers. Any contractor, repairman or other person retained by an Owner to perform work on any Lot, or the improvements thereon, or the Common Area will clean up all rubbish at the conclusion of each work day. Trash, garbage, or other waste must be kept in sanitary containers on the Lots which have been approved by the Board for weekly or more frequent collection. The Board may establish regulations as to the times and duration that waste containers may be located within view of neighboring Lots property for pick-up, and may determine and regulate the type and appearance of waste containers. The Board may also require that the Association or individual Owners employ one or more of a limited number of waste management or pick-up companies to retrieve waste and refuse from the Property.

**Section 11.9 Exterior Appearance.** No Owner can change the appearance of any portion of the exterior of any structural improvements (including, without limitation, any change to the external color scheme thereof) without first complying with any requirements and standards established pursuant to Article V of this Declaration.

**Section 11.10 Display.** No clothes, sheets, blankets, laundry of any kind or any other Articles can be hung out or exposed on any part of a Lot or the Common Areas nor will anything be hung, painted or displayed on the outside of the windows or placed on the outside walls or outside surface of doors of any structural improvement to any Lot and no awnings, canopies, shutters, earth stations, satellite dishes, or antennas can be affixed or placed upon the exterior walls of any part thereof, nor relocated or extended, without first complying with any requirements and standards established pursuant to the Article V . The display or use of items placed in the interior of any dwelling on any Lots which are visible from the exterior are subject to the Association Rules.

**Section 11.11 Rental.**

A. Any agreement for the leasing or rental ("lease") of a Lot must provide that the terms of such lease will be subject in all respects to the provisions of the Governing Documents, including all provisions dealing with Qualifying Residents. All leases must also provide that any failure by the lessee to comply with the terms of the Governing Documents is a default under the lease. All leases must be in writing, and any Owner who intends to lease his/her Lot must deliver a copy of the written lease to the Board no later than seven days before the commencement of the term of such lease, along with such other information as the Board may reasonably require. Any Owner who leases his/her Lot is responsible for assuring that the lessee complies with the Governing Documents.

B. No Lot shall be leased for transient or hotel purposes, which is defined as rental for any period less than 90 days, or any rental whatsoever, if the occupants of the Lot are provided customary hotel services (such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service); provided, however, that any Owner may rent a Lot for a period of less than 90 days to a contract purchaser of that Lot. Without limiting the foregoing, no owner shall rent his/her Lot on a month-to-month basis.

C. In the event any tenant fails to comply with the Governing Documents then, in addition to all other remedies which the Association has, the Association may notify the Owner about these violations and demand that Owner takes whatever action is necessary to remedy the violations within 30 days after the mailing date of the notice. If the violations are not remedied within this 30-day period, then the Owner must, at his/her own expense, institute and diligently prosecute an eviction action against the tenant as a non-monetary breach of the lease. Such action will not be compromised or settled without the prior written consent of the Association. In the event the Owner fails to take appropriate action to evict the tenant, then the Board has the right, but not the duty, to institute and prosecute such action as the attorney-in-fact for the Owner and at the Owner's sole cost and expense, including all attorney fees, litigation expenses and collection costs incurred which will be charged against the Owner as a Reimbursement Assessment. The Owner

acknowledges and agrees that the Association's power-of-attorney is coupled with an interest in the Lot, and is irrevocable.

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## Section 11.12 Vehicles.

A. Except as provided in this Section (or with respect to fire and emergency vehicles regulated pursuant to Section 11.2 above) no commercial or recreational vehicles or equipment are permitted to remain on any Lot or on the Common Areas, including, without limitation, streets, alleys, driveways, or side and rear yards, and must be parked or stored in a closed garage. The Association has the power, but not the obligation, to have a vehicle, other than a conventional passenger vehicle, towed from the Property at the expense of the owner of such vehicle, and in the event that any towing company charges the Association for the costs of towing such vehicle, the amount will be charged against the Owner of the Lot on which the vehicle owner resides or was visiting, as a Reimbursement Assessment.

B. Notwithstanding the above, recreational vehicles and equipment owned or rented by an Owner may be parked in front of that Owner's Lot (and not in front of any other Lot) for a maximum of three consecutive days, not to exceed seven total days in any 30-day period, for the sole purpose of loading and/or unloading such recreational vehicle or equipment immediately prior to or after the use of such recreational vehicle or equipment for recreational purposes. Upon receipt of prior written approval from the Board, recreational vehicles and equipment owned or leased by guests temporarily visiting an Owner may be parked in front of Owner's Lot (and nowhere else within the Property) for a period not to exceed one week; provided, however, that no person may occupy such recreational vehicles.

C. Except as otherwise provided in this Section 11.12, in order to maintain the aesthetic environment of the Property, no conventional passenger vehicle, recreational vehicle or equipment, commercial vehicle, or any other motorized vehicle may be parked upon any street overnight within or immediately adjacent to the Property. Vehicles of all Resident Owners and their guests and invitees, shall be kept in garages and residential driveways on the Lot or in other designated parking areas. However, this Section shall not be construed to permit the parking in the above-described areas of any vehicle whose parking in the Property is otherwise prohibited, or the parking of any inoperable or unlicensed vehicle, nor shall it permit the parking of any recreational vehicle, commercial vehicle, or equipment anywhere except within an enclosed garage or for authorized purposes as set forth in Section 11.12(B). The Board has the right to promulgate parking rules to modify or augment this Section.

D. No conventional passenger vehicle, recreational vehicle or equipment, commercial vehicle, or any other motorized or non-motorized vehicle may be dismantled, rebuilt, repaired, abandoned, stored, disabled, serviced or repainted on any Lot outside of the Lot's garage. The parking of damaged or leaking vehicles outside of a Lot's garage also is prohibited. For purposes of this Section, and without limiting the generality of the foregoing, a vehicle will be deemed to be in storage if such vehicle is placed on the a Lot for the primary purpose of storing such vehicle even if such vehicle is used occasionally. This restriction does not prevent temporary parking for loading or unloading of vehicle or washing and polishing and those activities normally incident to washing and polishing of vehicle.

E. As used in this Section, "recreational vehicles or equipment" includes without limitation, trailers, boats, campers, trailer coaches, busses, house cars, camp cars, motor

homes (which are larger than seven feet in height and/or greater than 124 inches in wheel-base length), or any other similar type of equipment or vehicle.

F. As used in this Section, "commercial vehicle" is defined as a truck of greater than one ton capacity and/or any vehicle with a sign displayed on any part of it advertising any kind of business or on which racks, materials, and/or tools are visible, or with a body type normally employed as a business vehicle whether or not a sign is displayed on any part of it. The type of motor vehicle license plate will not be material in determining whether a vehicle is a commercial vehicle within this definition.

G. Authorized parking will mean the parking of vehicles belonging to guests of Owners and commercial vehicles being used in the furnishing of services to the Association or the Owners and parking of vehicles belonging to or being used by Owners for loading and unloading purposes, or for any other purpose authorized in advance by the Board or its designated committee or agent.

H. The Board may adopt rules regulating the parking of vehicles within the Property, including the assessment of charges to Owners who violate or whose invitees violate, such rules. Any such charges are Reimbursement Assessments.

**Section 11.13 Animals.** No Owner may keep or raise any animals, livestock or poultry of any kind, on the Lot, except that two dogs, two cats or two other domestic, common household pets (meaning two in total, not two of each) may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purpose. The Board, upon a showing of good cause, may give an Owner written approval to keep more than two such household pets. Notwithstanding the foregoing, no animals or fowl may be kept on a Lot which in the good faith judgment of the Board or a committee appointed by the Board for this purpose, annoy or are obnoxious to residents in the vicinity. In no event are outdoor pens, kennels or runs permitted. All animals permitted to be kept by this Section must be kept on a leash when on any portion of the Property except within a Lot. Each and every Owner of any pet will immediately clean, remove and dispose all animal waste materials and will dispose of same on their own Lot. Each Owner will comply with all Association Rules regarding animals.

**Section 11.14 Oil and Mineral Rights.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind will be permitted upon or in the Property nor, subsequent to the recording of this Declaration, will oil or water wells, tanks, tunnels, or mineral excavations or shafts be installed upon the surface of the Property or with respect to water wells, within 50 feet below the surface of the Property and with respect to all other matters, within 500 feet below the surface of such properties. No derrick or other structure designed for use in boring for water, oil or natural gas will be erected, maintained or permitted upon the Property.

**Section 11.15 Rubbish and Debris.** All weeds, rubbish, debris, or unsightly material or objects of any kind must be regularly removed from the Lots and cannot accumulate on the Lot.

**Section 11.16 Antennae and Other Roof Mounted Equipment and Structures.** Except as permitted under the Federal Telecommunications Act, no television, radio, or other electronic

towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication and no air conditioners, heat pumps, and evaporative coolers can be erected, constructed, placed or permitted to remain on a Lot unless approved in writing by the ALC.

**Section 11.17 Drainage.** All drainage of water from any Lot will drain or flow into adjacent streets or alleys and will not be allowed to drain or flow upon, across, or under any other portion of the Property unless an easement for such purpose is granted. An Owner cannot alter the drainage of water which exists pursuant to the drainage plan originally created at the time of the initial sale of the Lot by Declarant, except through the use of a positive drainage device which does not materially affect the concentration or flow direction of drainage water under said drainage plan.

**Section 11.18 Garages and Driveways.** No garage doors will be permitted to remain open except for a temporary purpose, and the Board may adopt Association Rules regulating when garage doors may be open, including assessing fines against Owners, if the Owner or the Owner's family, guests, tenants or invitees violate these rules. Any fines which are assessed are Reimbursement Assessments. No portion of any garage may be converted to living space or used for any purpose that precludes vehicle parking. All driveways must be paved with concrete or constructed of paver blocks or bricks. Asphalt, gravel, decomposed granite or loose stone is prohibited.

**Section 11.19 Window Coverings.** Draperies, shades, blinds, curtains, or shutters must be installed and maintained by each Owner on all windows of any dwelling unit on a Lot. No window can be covered with aluminum foil, newspaper or other material not designed for use as a window cover. Window coverings may only be installed on the interior of any window and are prohibited on the exterior unless approved in writing by the ALC. All awnings, shade structures and enclosed patios are subject to approval by the ALC.

**Section 11.20 Payment of Utilities, Taxes and Insurance.** Each Owner is obligated to pay any and all assessments for sewage, garbage collections, water, electricity, cable television, telephone and other utilities, taxes, school assessments and other charges assessed against the Lot.

**Section 11.21 Resubdivision.** No Lot can be split or resubdivided, unless approved by the ALC.

**Section 11.22 Solar and Other Energy Saving Devices.** No solar or other energy saving device or system which is not part of the original construction of a Lot can be installed unless approved by the ALC; provided, however, that the ALC cannot impose conditions on the installation of such devices which conflict with A.R.S. §33-439.

**Section 11.23 No View Easements.** All Owners acknowledge that nothing in this Declaration or the Architectural Standards guarantees that any Owner's view will remain unobstructed or unchanged, and that each Owner's view is subject to obstruction or change due to future developments or construction.

To protect any views from and onto the Golf Course Property or any other portions of the Common Areas, the ALC may limit the height of walls or fences on Lots adjacent thereto, and require the use of special materials, such as wrought iron. Similarly, the height and nature of vegetation near the Golf Course Property may be subject to special regulation, and the Architectural Standards may deal with all such matters. The Architectural Standards may also prescribe limitations upon the storage of materials and equipment on a Lot which are visible from the Golf Course Property.

**Section 11.24 Swimming Pools.** If the Owner elects to construct a swimming pool, spa, pond or other artificial body of water on a Lot, such Owner will first petition and obtain the approval of the ALC of the plans for the pool, pool location, pool equipment location and enclosures and the fencing plans for the pool, which will comply with any ordinances of the City or County governing the construction of fences or other pool enclosures, and will thereafter maintain such enclosures in accordance with the plans approved by the ALC. Pool equipment and fencing around swimming pools may be subject to special Architectural Standards for Lots in proximity to or within the view of the Golf Course Property.

**Section 11.25 Use of Water Retention Areas.** Swimming, bathing, boating and other use of the water retention areas in the Common Areas, if any, is prohibited.

**Section 11.26 Subgrade Improvements and Irrigation.** The soils which underlie the foundation of homes within the Properties may have the potential for consolidation or swelling. No Owner can maintain any kind of landscaping, irrigation or vegetation within four feet of any Common Area or any other wall on the Lot or the foundation of the dwelling unit on the Lot.

No Owner can maintain or cause to be maintained a pattern of grading and drainage on the Lot, other than the original drainage and grading for that Lot, as originally established by the Declarant.

No Owner can construct a swimming pool, Jacuzzi, whirlpool, or other like improvement ("Subgrade Improvements") without first making, or causing to be made, an independent determination that the soil conditions of the Lot are suitable for such improvements. Each Owner, by taking title to a lot, acknowledges that Declarant made no representations or warranties, express or implied, regarding the suitability of the soil on any particular Lot for Subgrade Improvements. Therefore each Owner assumes all liability and risk and holds harmless and indemnifies Declarant and the Association from all liability and risk arising from, directly or indirectly, the construction of Subgrade Improvements upon the Lot.

In addition to the foregoing, no Owner will plant or water any plants or vegetation within four feet of any wall such that the foundation may be weakened or undermined. From four to eight feet, only indigenous vegetation watered with a drip-type minimal water use system will be used. Any planting of vegetation requiring higher water use may result in excessive moisture for the optimum soil moisture for Southern Arizona soil types. Each Owner will be solely responsible for any damage caused and will indemnify and defend the Association and Declarant from any claims relating hereto.

**Section 11.27 Golf Ball Barriers Prohibited.** Neither the Association nor any Owner may construct any golf ball net, obstruction, wall or other barrier either upon the Golf Course Property or upon any adjacent Common Area or Lot unless same is approved by the ALC.

**Section 11.28 Exceptions.** The restrictions set forth in Article V and in this Article do not apply to any of the following:

A. Any part of the Property which is owned by any public body, except that all parking restrictions in this Declaration or the Association Rules will apply to any public streets;

B. Any act done or proposed to be done upon the Property, or any condition created thereon, by any governmental agency or entity, or the agents or employees of any governmental entity acting in the scope of their authority as such agents or employees;

C. Any act done or proposed to be done upon the Property, or any condition created thereon, by any utility company furnishing electric, gas, water, telephone, or sewer service to all or parts of the Property, or the agents or employees of any such company, which act could be done by such company were this Declaration not made;

D. Any act done or proposed to be done upon the Property, or any condition created thereon, by any person pursuant to court order, or the order of any public officer or public agency; provided, however, that the orders contemplated in this subparagraph are only those which are the result of action initiated by public officers or agencies and which embody mandatory requirements with penalties for non-performance, and are not those orders which result from the application of private parties or are merely permissive.

E. Any construction or advertising by Declarant.

**Section 11.29 Lot 689.** Notwithstanding anything to the contrary in the Governing Documents, Lot 689 is adjunct to the Common Area and is used as an extension of an existing golf course maintenance yard for the storage of equipment and parking of vehicles and machinery used for Golf Course Maintenance and related purposes, including, but not limited to, construction of maintenance buildings and related facilities and any other improvements. Such area is owned, controlled and maintained by the Association as part of the Common Areas and all costs of doing so are part of the Operating Expenses of the Association.

## ARTICLE XII COMMON WALLS, PERIMETER WALLS, AND RELATED MATTERS

**Section 12.1 Common Walls.** Each wall, including patio walls and fences, which is constructed as a part of the original construction on a Lot, any part of which is placed on, adjacent to, or over the dividing line between separate Lots, will constitute a common wall. Each Owner consents to the use and construction of such common walls and acknowledges that portions of the Property may contain common walls. With respect to any such wall, each of the adjoining Lot Owners will assume the burden of and be entitled to the benefits recited in this Section and to the

extent not inconsistent herewith, the general rules of law regarding common or party walls will be applied.

A. Reciprocal Rights and Easements. The Owners of contiguous Lots who have a common wall, have reciprocal easements for support and an equal right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

B. Maintenance. Except as otherwise provided, the costs of reasonable repair and maintenance of a common wall will be shared equally by the Owners who make use of or benefit from the common wall.

In the event any common wall is damaged or destroyed through the act of one adjoining Owner, or any of his/her guests or agents or members of his/her family so as to deprive the other Owner of the full use and enjoyment of such wall, then the first of such Owners will forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the other Owner.

In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his/her agents, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both such adjoining Owners will proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

In the event of a dispute between Owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners delivered to the Association, the matter will be heard and determined by the ALC, except that Declarant will not be subject to this provision.

C. Structural Integrity/Alteration of Common Wall. Notwithstanding anything to the contrary contained herein, there will be no impairment of the structural integrity of any common wall without prior consent of the ALC. In addition to meeting the other requirements of these restrictions and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild any improvement on his/her Lot in any manner which requires the extension or other alteration of any common wall will first obtain the written consent of the ALC which will consider, in its discretion, the adjoining Owner's preference concerning the proposed modification, extension or alteration of the common wall.

**Section 12.2 Perimeter Walls.** Except for the Perimeter Walls, when any wall borders both a Lot and Common Area, which includes the Golf Course Property (Common Area Walls), or both a Lot and an area exterior to the Property, the obligation for the maintenance and repair of the wall will rest with the Owner of the Lot, except that the Association has the right to enter upon the Lot and perform such maintenance if the Owner fails to do so, with the cost to be assessed against the Owner as a Reimbursement Assessment. With regard to the Perimeter Walls and the Common Area Walls, the Association will repair and repaint the portion of the Perimeter Walls which face outside of Heritage Highlands and the Owner will be responsible for repairing and replacing that

portion which faces into the Lot. In the event that such walls have to be replaced, the costs of replacement will be equally shared between the Owner and the Association. Notwithstanding the foregoing, the Association will repair vandalism and graffiti to walls bordering the exterior of the Property, or bordering the Golf Course Property, which detracts from the appearance and aesthetics of the Property and which was not caused by the Owner of the Lot or their guests or invitees.

**Section 12.3 Location of Yard and Patio Walls.** Notwithstanding anything to the contrary herein, the ALC may determine that patio walls or yard walls dividing Lots from adjacent Lots, should be limited or restricted within all or portions of the Property, except along the rear Lot lines of the Lots. Nothing in this Article will be deemed to imply that any Owner has a right to erect walls or fences, including common walls, along the side property lines, or elsewhere. All walls or fences of any nature must be approved by the ALC.

It is acknowledged by all Owners that the topography of the land and other factors, may result in yard or patio walls being erected short of the actual property lines of each Lot, thereby leaving considerable land within the Lot lying outside the physical boundaries of each yard area. The placement of such walls is permissible and proper, and no objection may be made with respect thereto. The land lying outside the patio wall or yard may be subject to slope or drainage easements to allow for the flow of water, and easements are reserved hereby, from Lot to Lot, for such purposes. Regardless of such construction details, each Owner will remain solely responsible for all maintenance and repair of the Owner's Lot, both inside and outside the physical boundaries of any yard or walled areas.

### **ARTICLE XIII RIGHTS OF ENJOYMENT**

**Section 13.1 Members' Right of Enjoyment.** Every Member has a nonexclusive easement for use and enjoyment in and to the Common Areas and such right will be appurtenant to and will pass with the interest of every Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions of record or contained in this Declaration, including, without limitation, the following:

A. The right of the Association to charge fees to Members for the use of the Golf Course Property, including, without limitation, golf course membership dues, greens fees, range ball fees, golf cart and trail use fees, and equipment rental fees, pursuant to the Golf Course Rules. In connection therewith, it is understood and agreed to by all Owners, and their guests and invitees, that no person or entity is entitled to use the Golf Course Property, except pursuant to the Golf Course Rules and pursuant to written membership agreements or greens fees plans or programs executed by the Owner of the Lot or Lots in question, and any use by guests or invitees of such Owners will similarly be subject to such rules and regulations. This Section is further subject to the provisions of Article XIV.

B. The right of the Association to limit the number of guests of Members and to limit the use of the Common Areas by persons not in possession of a Lot, but owning a portion of the interest in a Lot required for Membership;

C. The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas;

D. The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and in aid thereof, to mortgage said property, provided that the prior affirmative vote or written approval of a majority of a quorum of the voting power in the Association has been obtained to mortgage said property, and provided further that the rights of the lender thereunder will be subordinated to the rights of the Members. In the event of a default upon any such mortgage of the Common Areas, the lender's rights thereunder will be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of the common Areas to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties will be returned to the Association and all rights of the Members hereunder will be fully restored;

E. The right of the Association to suspend the right of a Member to vote and to use the recreational components of the Common Areas during any time in which any Assessment against his/her Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association; provided, that any suspension of such right to use such Common Areas, except for failure to pay Assessments, will be made only after notice and an opportunity to be heard is given. Notwithstanding the foregoing, the Association will not have the right hereunder to suspend any Member's right to use any portion of the Property necessary for such Member to gain access to his/her Lot;

F. The right of the Association to establish in cooperation with the City or County, a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of this Section, all or any portion of the Common Areas to said district.

**Section 13.2 Delegation of Use.** Any Member may delegate his/her right of enjoyment to the Common Areas to the members of his/her family or his/her tenants who reside on his/her Lot, or to his/her guests, subject to the Association Rules, including the Golf Course Rules, which may include (among other things) rules governing the number of guests, their times and manner of usage, and the payment of additional fees and charges. In the event and for so long as an Owner delegates said rights of enjoyment to his/her tenants, said Owner will not be entitled to said rights.

**Section 13.3 Waiver of Use.** No Member may exempt himself/herself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by him/her from the liens, charges or other provisions of the Governing Documents, by waiver of the use and enjoyment of the Common Areas, or the abandonment of his/her Lot.



**ARTICLE XIV  
EASEMENTS, GOLF COURSE DISCLAIMERS  
AND RELATED MATTERS**

**Section 14.1 Easements in Favor of Golf Course Property.** The following easements are appurtenant to the Golf Course Property, for the use (subject to the Golf Course Rules) and benefit of the Association, the Owners, and their respective guests and invitees who are allowed to use the Golf Course:

A. Easement on Adjacent Lots for Golf Course Purposes. A 10' wide perpetual easement for the construction, maintenance and use of golf course related improvements over that part of each Lot that is adjacent to the Golf Course Property.

B. Easement for Errant Golf Balls. A perpetual general easement burdening each Lot in the Property, for the entry, passage and landing of errant golf balls which are struck on any part of the Golf Course Property.

C. Easement for Golf Cart Paths; Parking. A perpetual easement burdening the Property (including all Lots and Common Areas), for the use, construction, repair and maintenance of such golf cart and pedestrian paths as the Association deems necessary, provided, however, that no such golf cart or pedestrian path will encroach upon any structural dwelling constructed or to be constructed upon any Lot. The property burdened by the easement set forth herein will be maintained by the Association.

**Section 14.2 Disclaimer Regarding Golf Course Property.** Each Owner, by accepting a deed for the Lot, whether or not it is expressed in such deed, acknowledges the following regarding the Golf Course Property:

A. Inherent Risks Associated with Golf Course. Each Owner is aware of the risks inherent in owning property near a golf course, including but not limited to the following:

- (1) maintenance activities on the Golf Course begin early in the morning and extend late into the evening, which is generally from approximately 5:00 a.m. to approximately 8:00 p.m. unless there is an emergency situation which necessitates a deviation from these times.
- (2) during certain periods of the year, the Golf Course will be heavily fertilized;
- (3) the maintenance of the Golf Course may require the use of chemicals and pesticides;
- (4) the Golf Course will be watered with reclaimed water with other sources as backup supplies;

(5) golf balls are not susceptible of being easily controlled and accordingly may enter an Owner's airspace, and strike the Owner, the Owner's guests, yard, walls, roof, windows, landscaping and personal property causing personal injury and property damage.

Neither the Association, nor the City, nor any employee or agent of any of them, will be liable for personal injury or property damage caused by the above matters, and each Owner, by accepting a Deed to his/her Lot, acknowledges and agrees to same, and releases the Association and the City, and their respective officers, directors, employees, agents, successors and assigns from any and all liability in connection therewith, on behalf of himself/herself, his/her family and all guests and invitees.

Furthermore, each Owner of a Lot adjoining the Golf Course Property and each other Owner within the Property assumes the risk inherent in owning property adjacent to or near a golf course, including, without limitation, the risk of personal injury and property damage from flying golf balls and the other matters and risks disclosed above, and indemnifies and agrees to hold the Association and any person using the Golf Course Property harmless from actual loss arising from claims by such Owner or persons using such Owner's Lot for any such personal injury or property damage.

B. No Right of Access to Golf Course. No Owner of a Lot adjoining the Golf Course Property has any right of ingress, egress or access to the Golf Course Property from such Owner's adjoining Lot, nor will any Owner of a Lot adjoining the Golf Course Property have any express or implied easement burdening the Golf Course Property or any other Lot for light, air or view;

C. Use of Golf Course by the Association, Declarant and the Public; . There is reserved to Declarant (for so long as Declarant owns any Lot or has any interest in the Property) and to the Association, an easement burdening the Common Areas and Golf Course Property for the use of the Clubhouse and Golf Course by the Declarant and Association, and their respective employees, officers, agents, investors, guests and invitees. The easement and rights hereby reserved will be free of charge (including any fees, dues, or other charges) unless otherwise agreed in writing by the Declarant or by the Board of Directors for the Association , and will include the right, free of charge, to schedule and host special events, golf tournaments, and other functions at the Clubhouse and Golf Course in connection with its advertisement or promotion of the Property, or which are social or recreational events for persons or entities affiliated with the Property, all at times determined by the Association in its sole discretion, and such rights will include rights to the use of all Common Areas and streets for ingress, egress and parking purposes. Preferential tee times, reservation policies, and other rules may be established in relation to such reserved rights.

The Association has the further right, subject to the Golf Course Rules, to allow the public at large to have certain limited rights of access and play, and may, pursuant to said Golf Course Rules, conduct golf tournaments and special or promotional events open to the public. Declarant or the Association may grant rights related to the Golf Course Property for the benefit of the guests and invitees of one or more resort hotel facilities. Any such privileges granted to the public at large or in connection with a resort hotel facility will be conditioned upon payment of fees and charges for carts, greens fees, trail fees, and the like established by the Association, unless waived in writing by the Association in particular instances. Preferential tee times, reservation

policies, and other rules may be established with the Association's written consent. It is acknowledged by all Owners and Members that the Association has the right to adopt such Golf Course Rules and to grant such rights to the public and special use privileges and rights in connection with such resort hotel facilities.

### **Section 14.3 Certain Easements for Owners.**

A. Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Property, the Owners of any Lot served by said connections, lines or facilities have the right and easement, to the full extent necessary for the full use and enjoyment of such portion of such connections which service his/her Lot, and to enter upon the Lots owned by others, and upon the Common Areas, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, or upon Common Areas, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company will promptly repair any damage to a Lot or Common Area caused by such entry as promptly as possible after completion of work thereon.

B. Ingress, Egress and Recreational Rights. The Owners each have a nonexclusive easement for ingress, egress, pedestrian walkway and general recreational purposes over and upon the Common Areas. Such easements are subject to the rights of the Association as set forth in the Article XIII.

C. Easements in Common Areas in Favor of Individual Owners. The Common Areas, both before and after transfer to the Association, are subject to the unilateral right of the Association to establish easements in, over, upon, under and through the Common Areas in favor of an individual Owner or Owners. The Association has the right, from time to time, to grant to any Owner a nonexclusive or an exclusive easement in, over, upon, under and through portions of the Common Areas consisting of unimproved areas adjacent to the specific Owner's Lot for use and enjoyment in connection with such Lot. The Association has the sole discretion to establish the size and shape of such easements. The conveyance of the portion of the Common Areas to an Owner will be subject to this Declaration and the Association's rights herein, and is responsible for maintenance and all liability associated with the use of such easement.

### **Section 14.4 Certain Easements for Association.**

A. Association Rights. There is reserved to the Association easements over every portion of the Property, for the purpose of permitting the Association to discharge its obligations and powers as described in the Governing Documents.

B. Rights and Duties: Utilities and Cable Television. There is granted to the Association, an easement over every portion of the Property in which sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed which serve the Common Areas. Such easement will include all rights which are necessary for the full use and enjoyment of such portion of such connections which

service the Common Areas and to enter upon Lots owned by others, or to have utility companies enter upon Lots owned by others, in or upon which any such connections, lines or facilities, or any portion may lie, to repair, replace and generally maintain said connections as and when the same may be necessary, provided that the Association or utility company will promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

**Section 14.5 Support, Settlement and Encroachment.** Subject to the conditions and limitations in this Section, there is reserved on, over, under, and across each Lot and Common Area (including the Golf Course Property) within the Property, an easement for the settlement, support, encroachment, and maintenance of structures and landscaping originally constructed or installed by Declarant, primarily on any adjacent Lot or Common Area. The easement will be appurtenant to such adjacent Lot or Common Area for the benefit of the Owners thereof. Any such encroachment will be maintained by the Owner of the property benefitted by the easement set forth herein at its sole cost and expense. The Owner of the property benefitted by the encroachment easement set forth herein hereby indemnifies and holds harmless the Owner of the property burdened by such easement for all costs and expenses actually incurred by the Owner of the burdened property arising from the encroachment, including, without limitation, expenses arising from defending or curing any mechanic's liens resulting from the installation or maintenance of any encroaching improvement.

## ARTICLE XV RIGHTS OF LENDERS

**Section 15.1 Priority of Mortgage Lien.** No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, will affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions will be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot except as otherwise provided in this Article.

**Section 15.2 Curing Defaults.** A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale will not be obligated to cure any breach of the provisions of this Declaration which is incurable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is incurable or not feasible to cure will be final and binding on all Mortgagees.

**Section 15.3 Resale.** It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

**Section 15.4 Relationship with Assessment Liens.**

A. The lien provided in the Article IV for the payment of Assessments (except for Reimbursement Assessments) is subordinate to the lien of any First Mortgage.

B. If any Lot subject to a monetary lien in favor of the Association is subject to the lien of a First Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration will not operate to affect or impair the lien of such First Mortgage; and (2) the foreclosure of the First Mortgage lien or the acceptance of a deed in lieu of foreclosure (such events referred to as "Events of Foreclosure") will not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, will take title free of the lien and any personal obligation for the assessments which have accrued up to the time of any of the Events of Foreclosure, but subject to the lien for all accruing after the Foreclosure.

C. Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, will take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to such Lot, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Lots within the Property.

D. Nothing in this Section will be construed to release any Owner from his/her obligations to pay for any Assessment levied pursuant to this Declaration and foreclosure of the First Mortgage does not negate the Owner's personal liability for assessments accruing up to the date of the Event of Foreclosure.

**Section 15.5 Notification Rights.** Each First Mortgagee that makes a specific written request to the Association identifying the name and address of the First Mortgagee, and the Lot number or address of the Lot encumbered by its mortgage shall be an "Eligible Mortgage Holder" and shall be entitled to receive:

A. Written notification from the Association of any default in the performance by the Owner of a Lot encumbered by the Mortgage in favor of such First Mortgagee of any obligation under the Governing Documents which is not cured within 60 days.

B. An annual financial statement of the Association within 180 days following the end of any fiscal year of the Association.

C. Written notice of all meetings of Members of the Association.

D. Written notice of any condemnation loss or casualty loss affecting a material portion of the Properties

E. Written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond.

**Section 15.6 Mortgagees Furnishing Information.** Mortgagees are authorized to furnish information to the Board concerning the status of any Mortgage.

**Section 15.7 Conflicts.** In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article XV will control.

**Section 15.8 Voting Rights of First Mortgagees.** In the event of a default by an Owner in any payment due under the terms of any First Mortgage or the promissory note secured thereby, the First Mortgagee or its representative has the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights will be restored to him/her at such time as such default is cured.

**Section 15.9 Payment of Taxes or Premiums by First Mortgagees.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas, unless such taxes or charges are separately assessed against the Owners, in which case the rights of First Mortgagees will be governed by the provisions of their Mortgages. First Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and First Mortgagees making such payments will be owed immediate reimbursement therefor from the Association.

## ARTICLE XVI GENERAL PROVISIONS

### Section 16.1 Enforcement.

A. The Association may enforce the Governing Documents by law or in equity, including, but not limited to:

(1) Imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Owner or other violator. An Owner is responsible for the payment of any penalty which is imposed against the Tenant of an Owner or by any guest or invitee of the Owner.

(2) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 15 days delinquent in paying any assessment or other charge owed to the Association;

(3) Exercising Self Help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(4) Requiring an Owner, at the Owner's expense, to remove any structure or improvement installed by the Owner on the Lot, if visible from adjoining lots, or the Common Areas. After notice and a time within which the Owner must perform, if the Owner fails to take action, the Board or its designee has the right to remove the structure or other improvement in violation and restore the Lot or Common Areas to substantially the same condition as previously

existed and any such action will not be deemed a trespass. The cost incurred is a Reimbursement Assessment;

(5) Without liability to the Association or any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the Design Guidelines from continuing or performing any further activities in the Properties;

(6) Towing vehicles which are parked in violation of this Declaration or the Association Rules; and

(7) Filing a lawsuit at law or in equity to enjoin a violation of the Governing Documents, to compel compliance with the Governing Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled.

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

C. No delay or omission on the part of the Association or any Member in exercising its right to enforcement hereunder will be construed as a waiver or breach of any of the provisions of the Governing Documents or an acquiescence in any breach of these Governing Documents and no right of action will accrue against the Board, the Association or any Member for their neglect or refusal to exercise such right of enforcement.

D. No breach of the foregoing provisions, conditions, restrictions or covenants will defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Properties. Such provisions, conditions, restrictions and covenants will be enforceable against any portion of the Properties acquired by any person through foreclosure for any breach occurring after such acquisition.

**Section 16.2 Owners' Rights to Enforce.** In addition to any rights which the Association has to enforce the Governing Documents, each Owner has the right to bring any action against any other Owner, in law or equity, to enforce the Governing Documents, except for the enforcement of the Assessment liens, in which case the Association has the exclusive right to such enforcement.

**Section 16.3 No Waiver.** Failure by the Association or by any Member to enforce any provisions of the Governing Documents, in any certain instance or on any particular occasion will not be deemed a waiver of such right on any such future breach of the such Governing Documents.

**Section 16.4 Cumulative Remedies.** All rights, options and remedies of the Association, the Owners or Mortgagees under this Declaration are cumulative, and not one of them will be exclusive of any other, and the Association, the Owners and the Mortgagees have the right

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to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

**Section 16.5 Severability.** Invalidation of any one or a portion of these covenants, conditions or restrictions by judgment or court order will in no way affect any other provisions which will remain in full force and effect.

**Section 16.6 Covenants to Run with the Land; Term.** The covenants, conditions and restrictions of this Declaration as amended from time to time, as provided herein, will run with and bind the Property and will inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns.

**Section 16.7 No Dedication.** No public rights are created by this Declaration either by gift, declaration or dedication.

**Section 16.8 Sale or Title Transfer.** Any Owner, prior to the sale or transfer of his/her interest, must give the Secretary of the Association timely notice of the Owner's intent to list the Lot for sale. Upon closing of title such selling the Owner will immediately notify the Secretary of the Association of the name and address of the new Owner.

**Section 16.9 Construction.** The provisions of this Declaration will be liberally construed to effectuate its purpose of creating a plan for the development of a residential community or tract and for the maintenance of the Property. The Article and Section headings have been inserted for convenience only, and will not be considered or referred to in resolving questions of interpretation or construction

**Section 16.10 Singular Includes Plural.** Whenever the context of this Declaration requires same, the singular will include the plural and the masculine will include the feminine and the neuter.

**Section 16.11 Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, will be applicable against every such result, and may be exercised by the Association or any Member. Such remedy will be deemed cumulative and not exclusive.

**Section 16.12 Attorney Fees.** In the event court action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action will be entitled to recover from the other party thereto as part of the judgment, reasonable attorney fees, litigation expenses and costs of such suit. In the event the Association incurs any attorney fees in enforcing any provision of this Declaration, the Association Rules or the Architectural Standards, the Owner in default shall be responsible to reimburse said attorney fees, whether or not court action is instituted.



**Section 16.13 Notices.** Any notice to be given to an Owner, the Association or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration must be in writing and may be delivered as follows:

A. Notice to an Owner will be deemed to have been properly delivered when delivered to the Owner's Lot, whether the Owner personally receives the notice or not, or sent by first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address has been furnished, then to the street address of such Owner's Lot. Any notice sent by United States mail will be deemed delivered 48 hours after deposit in a mail receptacle. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and will be deemed delivered on all such co-Owners;

B. Notice will be deemed to have been properly delivered to the Association when sent by first class United States mail to the address furnished by the Association or to the address of its principal place of business;

C. Notice to a Mortgagee or its mortgage servicing contractor will be deemed to have been properly delivered when sent by first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice; and

D. The affidavit of an Officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, to any Mortgagee or Mortgagees shown on the records of the Association, will be deemed conclusive proof of such mailing, whether or not such notices are actually received.

**Section 16.14 Nonliability of Officials.** To the fullest extent permitted by law, neither the Board, the ALC, any other committees of the Association nor any member of such Board or committee will be liable to any Member of the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

**Section 16.15 Amendments.**

A. Except as otherwise provided herein, this Declaration may be amended at any time, by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent of the Owners of not less than two-thirds of the Lots. Such amendment will be effective upon its recordation by the office of the Pima County Recorder.

B. No amendment to this Declaration shall apply to any existing improvement if such application would cause the existing improvement to become non-conforming. So long as Declarant owns a single Lot, any such amendment shall first be submitted to Declarant for its approval, and if such approval is not granted, such amendment shall be void.

C. The Association has financial obligations to the Declarant pursuant to an Agreement, which was recorded on March 17, 2005, in Docket 12511 at page 4037, office of the Pima County Recorder. None of the provisions of this Declaration shall be construed to limit or interfere with the obligation, ability or authority of the Association to comply with the foregoing Agreement.

D. Until August 15, 2021, no provision of Section 16.15(C) or of Article XVII may be amended without Declarant's written consent. No other provision hereof may be amended without Declarant's written consent so long as Declarant owns a single Lot.

E. This Declaration may also be amended by Declarant so long as it owns a single Lot if the amendment is solely to correct any error or ambiguity or if the Board approves of the amendment.

## ARTICLE XVII MANDATORY DISPUTE RESOLUTION PROCEDURES

**Section 17.1 Construction by Declarant.** Nothing in this Declaration, including, without limitation, any provision of Article V hereof will limit the right of Declarant to alter the Common Areas or Lots, or to construct such additional improvements as Declarant deems advisable prior to completion of improvements upon and the sale of the land shown upon the entire Master Development Plan, as amended from time to time. Such right will include but will not be limited to erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration will not limit the right of Declarant to establish on the Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development of the Property. Declarant reserves the right to alter its construction plans and designs as it deems appropriate.

**Section 17.2 Assignment of Declarant Rights.** The rights of Declarant hereunder may be assigned to any successor or successors to all or part of Declarant's interest in the Property by an express assignment incorporated in a recorded deed or lease, as the case may be, transferring such interest to such successor. Declarant may also sell undeveloped Lots to third party builders ("Merchant Builders") and may exempt such builders from any or all of the terms hereof, to the extent Declarant is exempt, without losing such exemption itself.

**Section 17.3 Right to Cure Alleged Defects.** It is Declarant's intent that the Property and all improvements constructed thereon be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time consuming and costly litigation. Accordingly, the Association, Board, and all Owners will be bound by the following claim resolution procedure:

A. Right to Cure. In the event that the Association, Board or any Owner or Owners (collectively, "Claimant") claim, contend or allege that any portion of the Common Area, any Lot, and/or any improvements constructed on the Property are defective or that Declarant, or its agents, consultants, contractors or subcontractors (collectively, "Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

B. Notice. In the event that a Claimant discovers any Alleged Defect, Claimant will notify Declarant in writing, within fifteen (15) days of discovery of the Alleged Defect, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

C. Right to Enter, Inspect, Repair, and/or Replace. Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservation of right, Declarant has the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Residence, including any residential dwelling unit constructed thereon, and/or any improvements for the purposes of inspecting and, if deemed necessary by Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, Declarant will be entitled to take any actions as it will deem reasonable and necessary under the circumstances.

D. Legal Actions. It is agreed that in the case of an Alleged Defect, rather than incur the cost of litigation in court proceedings, any and all disputes relating to Alleged Defects will be submitted to non-binding mediation in accordance with the applicable mediation rules of the American Arbitration Association, and should the matter not be resolved by mediation, then the matter will be submitted to binding arbitration in accordance with the applicable rules of the American Arbitration Association. Unless agreed otherwise by Declarant a panel of at least three arbitrators will be required in any matter involving in excess of \$100,000.00. In the event a Claimant initiates any arbitration against Declarant alleging damages: (1) for the costs of repairing or the replacement of any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith will first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any arbitration against Declarant, which notice will (at a minimum) include: (1) a description of the Alleged Defect, (2) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (3) the estimated cost to repair such Alleged Defect, (4) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and any members of the Board (if any), (5) a description of the fee arrangement between such attorney and the Association, (6) the estimated attorney fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (7) the estimated time necessary to conclude the action against Declarant, and (8) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. Failure to provide the notice required herein will not prejudice any lawsuits filed by the Association. In the event the Association recovers any funds from Declarant (or any other person or entity) to repair an Alleged Defect, any excess funds remaining

after repair of such Alleged Defect will be paid into the Association's reserve fund unless at least seventy-five percent (75%) of the voting power of the Association elects to allocate or distribute the remaining funds otherwise.

E. No Additional Obligations, Irrevocability and Waiver of Right. Nothing set forth in this Section will be construed to impose any obligation on Declarant to inspect, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law or any limited warranty provided by Declarant in connection with the sale of the Lots and/or the improvements constructed thereon. The right of Declarant to enter, inspect, repair, and/or replace reserved hereby will be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Declarant in the Official Records of the County.

**Section 17.4 Amendment to Article XVII.** Any attempt to modify or eliminate Article XVII shall be void unless Declarant has agreed in writing to the amendment or change proposed, notwithstanding the provisions in Section 16.15.

IN WITNESS WHEREOF, the Declarant, having the full power and authority under Section 17.19 of the Original Declaration to amend and restate such Declaration, executes this Amendment on the 23rd day of August, 2006.

DECLARANT:  
 FIRST AMERICAN TITLE INSURANCE COMPANY, a California Corporation, as Trustee under Trust No. 4699 and not otherwise  
 By: Cindy A. Reich  
 Its: Trust Officer

1000-6-00000000

STATE OF ARIZONA )  
 ) ss:  
COUNTY OF PIMA )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this <sup>23</sup>23 day of  
August, 2006, by Cindy A. Reiche, Trust Officer of  
FIRST AMERICAN TITLE INSURANCE COMPANY, a California Corporation, not in its  
individual capacity, but as Trustee under Trust No. 4699.

Rachel L. Turnipseed  
Notary Public

