

When Recorded Return To:

Augustus H. Shaw, IV
SHAW & LINES, LLC
4523 East Broadway Road
Phoenix, AZ 85040

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LA BUENA VIDA ESTATES**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LA BUENA VIDA ESTATES (hereinafter referred to as the "Declaration") is made this 31 day of December, 2010 by the Association of La Buena Vida Estates, Inc., an Arizona non-profit corporation (the "Association").

WITNESSETH

WHEREAS, that certain Declaration of Establishment of Conditions, Reservations and Restrictions for La Buena Vida Estates, recorded at Book 3404, Page 538, records of Pima County, AZ, as amended by that certain Amendment of Declaration of Establishment of Conditions, Reservations and Restrictions for La Buena Vida Estates, recorded at Book 5519, Page 678, records of Pima County, AZ (hereafter, the "Lots 1-37 CC&Rs"), that certain Declaration of Establishment of Conditions, Reservations and Restrictions for La Buena Vida Estates Lots 39 through 73, recorded at Book 4130, Page 394, records of Pima County, AZ (hereafter, the "Lots 39-73 CC&Rs"), that certain Declaration of Establishment of Conditions, Reservations and Restrictions for La Buena Vida Estates Lots 74 through 110, recorded at Book 4536, Page 352, records of Pima County, AZ (hereafter, the "Lots 74-110 CC&Rs"), and that certain Declaration of Establishment of Conditions, Reservations and Restrictions for La Buena Vida Estates Lots 111 through 146, recorded at Book 4674, Page 337, records of Pima County, AZ (hereafter, the "Lots 111-146 CC&Rs" and together with the Lots 1-37 CC&Rs, the Lots 39-73 CC&Rs and the Lots 74-110 CC&Rs, the "Original CC&Rs"); and

WHEREAS, pursuant to the Original CC&Rs, the Original CC&Rs may be amended by a recorded instrument signed by Owners representing not less than sixty-seven percent (67%) of the Lots; and

WHEREAS, in order to increase the readability of the Original CC&Rs and to amend and restate the Original CC&Rs to modernize and update the CC&Rs, this Declaration was created and approved and signed by Owners representing not less than sixty-seven percent (67%) of the Lots.

NOW, THEREFORE, the Original CC&Rs are of no further effect and are hereby deleted, amended and restated by this Declaration as follows:

ARTICLE 1 DEFINITIONS

1.1. “**Annual Assessment**” means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.2. “**Architectural Committee**” means the architectural committee of the Association to be created pursuant to Section 5.9 of this Declaration and the Bylaws.

1.3. “**Architectural Committee Rules**” means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.9 of this Declaration and the Bylaws, as they may from time to time be amended or supplemented.

1.4. “**Areas of Association Responsibility**” means (i) all Common Area, including the Improvements and landscaping situated thereon, and (ii) any portion of the Improvements situated on a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association.

1.5. “**Articles**” means the Articles of Incorporation of the Association, as they may from time to time be amended.

1.6. “**Assessment**” means an Annual Assessment, Special Assessment or Lot Specific Assessment.

1.7. “**Association**” means The Association of La Buena Vida Estates, Inc., an Arizona nonprofit corporation, and its successors and assigns.

1.8. “**Association Lien**” means the lien created and imposed by Section 6.1 of this Declaration.

1.9. “**Association Property**” means any personal property owned or leased by the Association.

1.10. “**Association Rules**” means the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

1.11. “**Board**” means the Board of Directors of the Association.

1.12. “**Bylaws**” means the Amended and Restated Bylaws of the Association, as amended from time to time.

1.13. “**Common Area**” means all real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest. “Common Area” shall not include any real property, improvements or personal property acquired by the Association in lieu of foreclosure or trustee’s sale or through attachment, foreclosure, Sheriff’s sale, Trustee’s sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action.

1.14. “**Common Expenses**” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.15. “**Declaration**” means this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

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

1.17. “**First Mortgage**” means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

1.18. “**Improvement**” means any building, fence, wall or other structure or any swimming pool, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

1.19. “**Lessee**” means a third-party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein a “third party” is any Person who is not an Owner.

1.20. “**Lot**” means each parcel of real property designated as a lot on the Property and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.21. “**Maintenance Standard**” means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.22. “**Member**” means any Person who owns a Lot within the Association.

1.23. “**Owner**” means the record owner, whether one or more Persons, of legal, beneficial or equitable title to the fee simple interest of a Lot. “Owner” shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the “Owner.” “Owner” shall also include a purchaser under a contract for

the conveyance of real property subject to the provisions of A.R.S. Section 33-741, *et seq.* “Owner” shall not include purchasers under purchase contracts and receipts, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to such executory contracts pending the closing of a sale or purchase transaction.

1.24. “**Person**” means a natural person, corporation, business trust, estate, trust, living trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.25. “**Property**” or “**Project**” shall mean and refer to that all real property reflected on that certain Plat of record in the office of the County Recorder of Pima County, AZ, in Book 19 of Maps and Plats at Page 30, that certain Plat of record in the office of the County Recorder of Pima County, AZ, in Book 22 of Maps at page 36, that certain Plat of record in the office of the County Recorder of Pima County, AZ, in Book 25 of Maps at page 26, that certain Plat of record in the office of the County Recorder of Pima County, AZ, in Book 25 of Maps at page 92 in addition to the Common Area, personal or mixed property herein before described which is subject to this Declaration, and such additions hereto as may hereafter be brought within the jurisdiction of the Association.

1.26. “**Project Documents or Governing Documents**” means this Declaration, the Articles, the Bylaws, the Association Rules, and the Architectural Committee Rules.

1.27. “**Purchaser**” means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

1.28. “**Recording**” means placing an instrument of public record in the office of the County Recorder of Pima County, Arizona, and “**Recorded**” means having been so placed of public record.

1.29. “**Resident**” means each individual occupying or residing in any Residential Unit.

1.30. “**Residential Unit**” means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.31. “**Single Family**” means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.32. “**Special Assessment**” means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

1.33. “**Visible From Neighboring Property**” means, with respect to any given object, that the object is or would be visible to a person six feet tall, standing at ground level on any part of the neighboring property.

**ARTICLE 2
PLAN OF DEVELOPMENT**

2.1. **Property Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development and use of the Project and in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners.

**ARTICLE 3
USE RESTRICTIONS**

3.1. **Architectural Control.** In addition to any requirements imposed by Pima County or any other local or municipal ordinances.

3.1.1 All Improvements constructed on Lots shall be of new construction, and no building or other structures shall be moved from other locations onto any Lot.

3.1.2 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.3 No Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

3.1.4 No Exterior Alteration shall be made or done without the prior written approval of the Architectural Committee.

3.1.5 Any Owner desiring approval of the Architectural Committee for any Exterior Alteration shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Exterior Alteration that the Owner desires to make or perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove, in writing, an

application for approval within forty-five (45) days after receipt of the application and any supporting information, plans and specifications requested by the Architectural Committee (the application shall not be deemed received until all supporting information, plans and specifications have been received), approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans.

3.1.6 The approval by the Architectural Committee of any Exterior Alteration pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Exterior Alteration subsequently submitted for approval.

3.1.7 Upon receipt of approval from the Architectural Committee for any Exterior Alteration, the Owner who requested such approval shall proceed to perform, construct or make the Exterior Alteration approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee, including plans deemed approved as a result of the Architectural Committee's failure to act, must be submitted to and approved in writing by the Architectural Committee. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

3.1.9 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any Exterior Alteration pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.10 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.11 The Architectural Committee Rules may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation.

3.1.12 The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Committee, pay to the Association a deposit in an amount determined by the Architectural Committee to be used by the Association to remove any construction debris from a Lot that is allowed to accumulate in violation of Section 3.3 of this Declaration or to repair any damage to the Common Area. The Architectural Committee shall also have the right to determine which portion, if any, of the deposit will be nonrefundable. Any portion of the deposit that is refundable shall be refunded to the Owner by the

Association upon the completion of construction of the Improvements, the removal of all construction debris from the Lot, and the repair of any damage to the Common Area occasioned by such construction.

3.2. **Temporary Occupancy and Temporary Buildings.** No trailer, incomplete building, tent, shack, garage, or temporary buildings or structures of any kind, shall be used at any time for a residence. Temporary buildings, trailers or other structures used during the construction of Exterior Alterations approved by the Architectural Committee, interior remodeling, re-roofing or other work shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of one month without the prior written approval of the Architectural Committee.

3.3. **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit there from, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Owners also may not place debris, natural or otherwise, in any wash or natural space.

3.4. **Diseases and Insects.** No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.5. **Repair of Building.** No Residential Unit, building or structure on any Lot or other property shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. In the event that any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt or shall be demolished.

3.6. **Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

3.7. **Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit

so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances of the City of Phoenix, and (iii) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms “business” and “trade” as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended or does generate a profit, or (c) a license is required for such activity.

3.8. **Leasing of Lots.** The Leasing of Lots shall be permitted within the Association. The Board of Directors, from time to time, shall establish rules and regulations concerning the leasing of Lots within the Association. Such rules and regulations shall be binding on Owners and their tenants and shall be established in the sole and absolute discretion of the Board.

3.9. **Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.10. **Other Uses, Activities and Facilities.** The Association Rules may contain restrictions, limitations, rules and regulations governing any additional uses, activities, Improvements or facilities on a Lot or within the Project that are (i) Visible From Neighboring Property, (ii) visible from any Common Area or street, or (iii) that are deemed by the Association to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents. The following are some, but not all of the uses, activities, Improvements or facilities that may be governed by the Association Rules: animals; construction and maintenance activity; antennas; trash containers and collection; clothes drying facilities; signs; flags and flagpoles; basketball, tetherball and volleyball standards; motor vehicles; parking; trucks, trailers, campers and boats; towing of vehicles; carports and driveways; rooftop air conditioners; solar energy devices; sport courts; lighting; use of Common Area; amplifiers; window treatments; garage sales; and noise. The foregoing list is not intended to be exhaustive. The Association Rules are intended to be responsive to the changing needs of the Project and the desires of the Association’s Members. Limitations will comply with Federal and State Laws and Regulations.

3.11. **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article 3, the Association Rules or the Architectural Rules if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other Owners or Lessees or the Project and is consistent with the high quality of life intended for residents of the Project.

3.12. **Drainage.** No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

3.13. **Animals.** No animals, birds, fowl, poultry or livestock, other than four of generally recognized house or yard pets, shall be maintained on any portion of the Property and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise, odor or to become a nuisance. Upon the written request of any Owner, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any portion of the Property is reasonable. Any decision rendered by an Architectural Committee shall be enforceable as other restrictions contained herein.

3.14. **General Restrictions Regarding Parking of Vehicles.** The Association, from time to time, shall develop and promulgate reasonable rules and regulations concerning the parking of vehicles within the Association.

3.15. **Signs.** No signs whatever shall be erected or maintained on the exterior of any Lot, except (1) such signs as may be required by legal proceedings, (2) not more than two (2) residential identification signs each of a combined total face area of seventy-two square inches or less, (3) during the time of construction of any Improvement one job identification sign not larger than eighteen by twenty-four inches in height and width, having a face area not larger than three square feet, (4) such other signs which have been approved in advance by the Architectural Committee, (5) other signs as allowed by A.R.S. § 33-1808.

3.16. **Antennas.** No antenna, satellite television dish exceeding 18 inches or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be installed, used or maintained on any portion of the Lot whether attached to the Building or otherwise without the prior written approval of the Architectural Committee, unless applicable law prohibits the Architectural Committee from requiring prior approval. Even if applicable law prohibits the

Architectural Committee from requiring prior approval for the installation or use of certain types of antennas, satellite dishes or other devices, any such antennas, satellite dishes or other devices must be installed or constructed in accordance with such rules and regulations as the Architectural Committee may adopt.

3.17. **Motor and Recreational Vehicles and Parking.** Except as otherwise regulated by statute, no mobile home, boat, jet ski, boat or jet-ski trailer, motor home, recreational vehicle, all-terrain vehicle, off-highway vehicle, trailer, horse trailer, camper, camper shell, snowmobile, bus, truck, or other motor vehicle classified by manufacturing rating as exceeding 1 ton standard equipped pickup truck, vehicles designed for commercial purposes, or similar vehicles shall be parked, kept, placed, maintained, constructed, reconstructed, or repaired on any Lot or within the Property so as to be Visible From Neighboring Property; provided, however, that the provisions of this section shall not apply to emergency vehicle repairs and provided, further, that such items may, for a period not to exceed twenty-four (24) consecutive hours, be parked on paved driveways on Lots for the purpose of loading, unloading, and preparing such items for offsite usage.

All other motor vehicles shall be permitted to park only in garages, carports or on paved driveways on Lots and may not park on any roadway or washes; provided, however, that vehicles of Guests may park on the streets and for a temporary period of time not to exceed twelve (12) hours, provided that such parking is done in a fashion so as not to obstruct driveways on other Lots or traffic within the Project, and provided further, that in no event may such vehicles be parked on any roadway overnight. All motor vehicles of Owners, Occupants, and Guests shall be kept in garages, carports or driveways on a Lot. Any vehicle parked in violation of this Declaration may be towed at the direction of the Board or its agent, and the recording of this Declaration shall constitute the legal notice of intent to tow as though the Declaration were posted in accordance with the applicable laws and ordinances. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the assessment lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of assessments. The Board may adopt additional parking restrictions including the establishment of fines and assessments for their violation. All vehicles must be currently insured and registered.

ARTICLE 4 RIGHT-OF-WAY AREA AND EASEMENTS

4.1. **Easements.** There are hereby created blanket and perpetual easements upon, across, over and under the Common Areas, including all rights of ingress and egress, for the purposes of (a) installation, replacement, repair and maintenance of all utility and services lines and systems including, but not limited to water, sewers, gas, telephone, electricity, television cable and communication lines and systems, roadways and drainage facilities on; (b) construction of any recreational facilities on, and

maintenance of, the Commons Areas, and (c) the exercise of all rights granted to, and performance of all obligations imposed upon, Declaration or the Association by this Declaration or pursuant to law. In addition, the Common Areas shall be subject to such easements for minor encroachments, overhangs, fences and walls on adjacent property as may be constructed in accordance with the plans and specifications of the Declarant. The foregoing easements are for the benefit of the Owners of the Lots and the persons performing the required or permitted functions and shall be in addition to, and not in limitation of, easements shown on the recorded plat of the Common Areas or in any other instrument recorded prior to the recordation of this Declaration, as the same may be amended.

4.2. **Owner's Easements of Enjoyment.** Every Owner in good standing and current on all dues and assessments shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

4.2.1 The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.10 of this Declaration.

4.2.2 The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

4.2.3 The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, including but not limited to landscaped areas, not indeed for use by the Owners or Lessees.

4.2.4 The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner or Lessee and such Owner's or Lessee's family, tenants and guests to use the recreational facilities for any period during which any assessment against his Lot remains unpaid, or if the Owner or Lessee has violated any other provisions of the Project Documents and has failed to cure such violation within thirty (30) days after the Association notifies the Owner of the violation.

4.2.5 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right, without the specific written consent of the Association, to use the Common Area until the termination or expiration of such lease.

ARTICLE 5 THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1. **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents. In the event of any conflict or inconsistency between

this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

5.2. **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws.

5.3. **The Association Rules.** The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Areas of Association Responsibility, (iii) the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas, or (iv) any other subject within the jurisdiction of the Association. Except as limited herein, the Association Rules may be adopted, amended and repealed by a majority of the members of the Board. In the event that the Association Rules establish restrictions or limitations on the use and maintenance of Lots, such rules and regulations may be adopted, amended or repealed by three-fourths (3/4ths) of the members of the Board. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.4. **Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5. **Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

5.6. **Identity of Members.** Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

5.7. **Classes of Members.** The Association shall have Members who shall be Owners of Lots. A Member shall be entitled to one (1) vote for each Lot owned.

5.8. **Transfer of Membership.** The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

5.9. **Architectural Committee.** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The members of the Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The members of the Architectural Committee shall be appointed by the Board. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions (the "Architectural Committee Rules"). Any decisions of the Architectural Committee may be appealed to the Board of Directors. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any request for approval submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

5.10. **Conveyance or Encumbrance of Common Area.** The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent of the affirmative vote of Owners representing at seventy-five percent (75%) of the votes entitled to be cast by the members of the Association.

5.11. **Suspension of Voting Rights.** If an Owner otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Project Documents, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

ARTICLE 6 COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIEN THEREFOR

6.1. **Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties.** Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and penalties shall be established and collected as

provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in enforcing the Project Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine or penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2. **Annual Assessments.**

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot. The Board of Directors, without the express authorization of the Members, may increase the Annual Assessment up to ten percent (10%) greater than the immediately preceding fiscal year's Annual Assessment. Any increase in the Annual Assessment above ten percent (10%) must be approved at a meeting of the Members where a quorum of ten percent (10%) is present and a majority of the Membership who vote in person or by absentee ballot approve of the increase.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may, subject to the ten percent (10%) limit set forth in Section 6.2.1 above, increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3. **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the Association's fiscal year.

6.4. **Rate of Assessment.** The amount of the Annual Assessment for each Lot shall be the amount obtained by dividing the anticipated Common Expenses of the

Association for the Assessment Period for which the Annual assessment is being levied by the total number of Lots.

6.5. **Special Assessments.** The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, improvement, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of sixty seven percent (67%) of the votes entitled to be cast by Members who are voting in person or by absentee ballot at a meeting duly called for such purpose. The Quorum requirement for such a meeting shall be ten percent (10%) of the total number of Lots in the Association.

6.6. **Lot Specific Assessments.** Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Governing Documents that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

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

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

6.9. **Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period.

6.10. **Transfer, Refinance and Disclosure Fees.** Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his or her Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

6.11. **Fines and Penalties.** In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.

6.12. **Notice of Violation, Appeal and Payment of Fines and Penalties.**

6.12.1 The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents by the Owner, his family or guests. A Notice of Violation shall contain (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner or Lessee for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

6.12.2 A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of

the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Residential Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

6.12.3 The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within thirty (30) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

6.12.4 Any fines or penalty levied pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

6.13. **Costs of Enforcement.** Any costs incurred by the Association in enforcing this Declaration or the other Project Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, reasonable attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to Section 6.1.

6.14. **Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association.**

6.14.1 Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within thirty (30) days after the Assessment, fee, charge, fine or penalty, or the installment thereof, first became due shall bear interest from the due date at the rate of interest established from time to time by the Board. In addition, the Board of Directors may establish a late fee and interest to be charged to any Owner who has not paid any Assessment, fee, charge, fine or penalty, or any installment thereof, within thirty (30) days after such payment was due.

6.14.2 As set forth in Section 6.1, the Association shall have a lien on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees levied against or charged to a Lot or the Owner thereof. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including late charges, interest, costs of collection, lien recording fees, lien release fees, reasonable attorneys' fees and the costs of preparing the Notice of Lien.

6.14.3 Subject to applicable statutes, the Lien created by Section 6.1 shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body.

6.14.4 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges,

costs of collecting and reasonable attorneys' fees remain delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

6.14.5 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right, if any, to the use of the recreational facilities that are part of the Common Area.

6.14.6 The Board may, without notice or demand, enforce the lien established pursuant to Section 6.1.

6.14.7 The Board may, without notice or demand, institute an action at law for a money judgment to recover the amount of the delinquent Assessment together with all fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees.

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

ARTICLE 7 MAINTENANCE

7.1. Areas of Association Responsibility.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the (i) Common Area, and all Improvements located thereon, and (ii) all Association Property.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.2. **Lots.** Each Owner shall be responsible for maintaining, repairing or replacing all buildings, Residential Units, rear enclosed patio areas, or other Improvements situated on his or her Lot. All buildings, Residential Units, and other Improvements shall at all times be kept in good condition and repair. No yard equipment, wood piles or storage area may be maintained so as to be Visible From Neighboring Property or streets. All driveways or aprons shall be paved in asphalt, concrete or pavers etc. All driveways shall be properly maintained in a manner as to be serviceable and aesthetically pleasing.

Each Owner shall also be responsible for maintaining all vegetation on their Lot and 18 inches from the curb adjacent to their Lot. This includes trees, bushes, grass and any other natural or other debris. Dirt, rock or other debris should not be allowed to fall into the roadway or adjacent Lots. It is each lot owner or lessees sole responsibility to clean, cut and or clear any debris natural or manmade that may grow or fall into the roads or other adjacent lots. If these guide lines are not maintained. The board has the right to hire the proper personnel or contractor to perform the work and submit an assessment to be paid by the lot owner.

7.3. Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, Lessee, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Association Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Association Lien.

7.4. Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fifteen (15) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Association Lien.

7.5. Maintenance Easement. The rights and duties of Owners of Lots with respect to common walls shall be as follows:

7.5.1 Each Owner and Lessee shall permit the Owner of adjoining Lots, or their representatives, contractors, or employees, when reasonably required and in a reasonable manner, to enter his or her Lot for the purpose of repairing or maintaining that portion of such Owner's Residential Unit that is accessible only by entering upon such adjoining Lot.

ARTICLE 8 INSURANCE

8.1. **Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Area of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.2 Property insurance on all Area of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Area of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Directors and officers liability insurance in an amount to be determined by the Board;

8.1.5 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

8.1.6 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A “severability of interest” endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as the Association;
and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.2. **Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

8.3. **Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4. **Payment of Insurance Proceeds.** With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

8.5. **Repair and Replacement of Damaged or Destroyed Common Area.** Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

**ARTICLE 9
GENERAL PROVISIONS**

9.1. **Enforcement.** The Association or any Owner shall have the right to enforce Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the nonprevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

9.2. **Method of Termination.** This Declaration shall continue in full force and effect unless terminated by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes of in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Pima County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3. **Amendments.**

9.3.1 This Declaration may be amended at any time by the written approval or the affirmative vote of Owners of not less than sixty-seven percent (67%) of the Lots.

9.3.2 Notwithstanding the requirements of Section 9.3.1, the Board may amend this Declaration or the plat of the Association, without obtaining the approval or consent of any Owner in order to conform this Declaration or the plat of the Association to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the plat or the Project Documents is required by law or requested by the Board.

9.3.3 Any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the county Recorder of Pima County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

9.4. **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

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

9.6. **Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

9.7. **Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

9.8. **Laws, Ordinances and Regulations.**

9.8.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

9.8.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

9.9. **References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this

Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, successors and assignees.

9.10. **Gender and Number.** Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.11. **Captions and Titles.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

9.12. **Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Pima County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

9.13. **Condemnations of Common Area.** If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds may either be disbursed by the Association to the Owners with an equal share being disbursed to each Lot or retain such funds as additional operating or capital reserves.

