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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ENCORE AT TEMPE VILLAGE HOMEOWNERS'  
ASSOCIATION, INC.**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**ENCORE AT TEMPE VILLAGE HOMEOWNERS ASSOCIATION, INC.**

This Declaration of Covenants, Conditions, and Restrictions (the "Declaration") for ENCORE AT TEMPE VILLAGE HOMEOWNERS ASSOCIATION, INC., an Arizona nonprofit corporation, is made this 16 day of July, 2007.

**INTRODUCTION**

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

**ARTICLE 1**

**DEFINITIONS**

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

- 1.1 "**Areas of Association Responsibility**" means (a) all Common Area; and (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot or public right-of-way which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or other Recorded document executed by the Declarant or the Association.
- 1.2 "**Articles**" means the Articles of Incorporation of the Association, as amended from time to time.
- 1.3 "**Assessment**" means a Regular Assessment or Special Assessment.
- 1.4 "**Assessment Lien**" means the lien created and imposed by Article 7.
- 1.5 "**Assessment Period**" means the period set forth in Section 7.4.
- 1.6 "**Association**" means Encore at Tempe Village Homeowners Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.
- 1.7 "**Association Rules**" means the rules adopted by the Board pursuant to Section 6.3.
- 1.8 "**Board**" means the Board of Directors of the Association.

1.9 "**Bylaws**" means the Bylaws of the Association, as amended from time to time.

1.10 "**Collection Costs**" means all costs, fees, charges and expenditures including, without limitation, attorneys' fees (whether or not a legal action is filed), court costs, filing fees and recording fees incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, demand fees, interest or other amounts payable to the Association pursuant to this Declaration.

1.11 "**Common Area**" means all real property or interests therein (and any personal property) owned or leased by the Association, but shall exclude Residences. The Common Area shall include all of that real property designated on the Plat as tracts or easements including, but not necessarily limited to, any public access easements, landscape easement, and any Improvements respectively thereon, but excluding the Use and Benefit easement identified on the Plat, and shall constitute Common Area as to the Property. Without limiting the generality of the foregoing, Common Areas shall include any entry statements, any park, perimeter walls, and certain designated drainage and sewer easement areas.

1.12 "**Common Expenses**" means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

1.13 "**Community Documents**" means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules, and Design Guidelines, all as amended from time to time.

1.14 "**County**" means Maricopa County, Arizona.

1.15 "**Declarant**" means Woodside Tempe Village, LLC, an Arizona limited liability company, and person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.16 "**Declaration**" means this Declaration of Covenants, Conditions, and Restrictions for Encore at Tempe Village Homeowners Association, Inc., as amended <sup>Unofficial Document</sup> from time to time.

1.17 "**Design Guidelines**" means the procedures, standards and guidelines adopted by the Design Review Committee pursuant to Section 4.11, as amended or supplemented from time to time.

1.18 "**Design Review Committee**" means the committee created pursuant to Section 4.11.

1.19 "**Declarant Control Period**" means the period commencing upon the Recording of this Declaration and ending on the date that the Class B membership in the Association terminates pursuant to Section 6.8.

1.20 "**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.

1.21 "**First Mortgagee**" means the holder or beneficiary of any First Mortgage.

1.22 "**Improvement**" means: (a) any Residence, building, fence or wall; (b) any swimming pool, tennis court, basketball goal, backboard, apparatus or playground equipment; (c) any road, driveway or parking area; (d) any trees, plants, shrubs, grass or other landscaping improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, and (f) any other structure of any type, kind or nature.

1.23 "**Lessee**" means the lessee or tenant under a lease, oral or written, of any Lot, including an assignee of the lessee's or tenant's interest under a lease.

1.24 "**Lot**" means a parcel of land within the Property, whether improved or unimproved, intended for independent ownership and use and designated as a "lot" on a Plat, and any Residence, building, structure or other Improvement situated thereon.

1.25 “**Maintenance**” means the care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction of the Areas of Association Responsibility.

1.26 “**Maintenance Standard**” means the standard of maintenance of Improvements situated on Lots established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements situated on Lots generally prevailing throughout the Property.

1.27 “**Member**” means any Person who is a member of the Association as provided in Section 6.6.

1.28 “**Membership**” means membership in the Association allocated to a Lot pursuant to Section 6.7.

1.29 “**Owner**” means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot, Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 et. seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of a Lot subject to a deed of trust pursuant to A.R.S. § 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of a Lot, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

1.31 “**Plat**” means the final plat map of <sup>Unofficial Document</sup> ~~the~~ ~~map~~ ~~image~~ recorded on April 12, 2007 in Book 914 of Plats, Page 6, and any other plat map(s) subsequently Recorded, as such map(s) from time to time may be amended or supplemented of record by Declarant in the records of the County Recorder of Maricopa County, Arizona.

1.32 “**Property**” means the real property described on Exhibit A attached to this Declaration, together with all Improvements located thereon.

1.33 “**Purchaser**” means any Person who becomes the Owner of a Lot, except for: (a) Declarant; or (b) a Person who purchases a Lot and then leases it to Declarant for use as a model in connection with the sale or lease of other Lots.

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

1.35 “**Regular Assessment**” means the Assessments levied pursuant to Section 7.2.

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

1.37 “**Resident**” means each person occupying or residing in any Residence.

1.38 “**Special Assessment**” means any assessment levied pursuant to Section 7.3.

1.39 “**Visible From Neighboring Property**” means, with respect to any given Improvement, that such Improvement is or would be visible to a natural person six feet tall, standing at ground level on any part of any Lot, Common Area or any public street within or adjacent to the Property.

## ARTICLE 2

### PROPERTY AND PERSONS BOUND BY THIS DECLARATION

#### 2.1 Property Subject to this Declaration.

This Declaration is being Recorded to establish a general plan for the development, use and maintenance of the Property in order to protect and enhance the value and desirability of the Property. The Declarant declares that all of the land and improvements within the Property shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the land and improvements subject to this Declaration, each Person, 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, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration, and any amendments thereof. In addition, each such Person, by so doing, acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property, and hereby evidences his agreement that all the restrictions, conditions, covenants, 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, prohibitive and enforceable by the Association, all Owners and by Declarant, its successors, assigns and grantees, and covenants and agrees that the Lots and the Membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot, even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

#### 2.2 Disclaimer of Representations.

Declarant makes no representation or warranty whatsoever that: (i) the Property will be completed in accordance with the plans for the Property as they exist on the date this Declaration is Recorded; (ii) any Property subject to this Declaration will be committed to or ~~discontinued~~ a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

## ARTICLE 3

### EASEMENTS AND COMMON AREAS

#### 3.1 Owners' Easements of Enjoyment.

A. Subject to the rights and easements granted to the Declarant in Sections 3.3 and 3.4 of this Declaration, every Member, and any Person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in this Declaration;

(ii) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area, and restricting or prohibiting access to such portions of the Common Area (such as landscaped areas) not intended for use by the Owners, Lessees or Residents.

(iii) The right of the Association to suspend the right of an Owner and such Owner's family, Lessees and guests to use the Common Area if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association, or if the Owner has violated any other provisions of the Community Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

B. If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

### **3.2 Utility Easement.**

A non-exclusive, perpetual blanket easement is hereby granted over and through the Common Area for the purpose of: (a) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property or adjacent land any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private; (b) ingress and egress to install, construct, operate, maintain, repair and replace such equipment; and (c) storm water management and storm water drainage, as necessary or desirable for the orderly development of the Property. Such easement is hereby granted to any Person providing the aforesaid utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Declarant, where contemplated on any site plan approved by the Declarant or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Declarant. The Person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and shall restore the surface of the land and the surrounding vegetation and improvements to their original condition as soon as possible.

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

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### **3.3 Easements for Ingress and Egress.**

There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements run in favor of and are for the benefit of the owners and Occupants of the Lots and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Common Area and any and all private streets, private roadways, private driveways and private parking areas within the Property for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel.

### **3.4 Declarant's Easement to Facilitate Development.**

The Declarant hereby reserves to itself and its successors and assigns a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, including without limitation: (a) temporary construction easements; (b) easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (c) easements for the construction, installation and Maintenance of Improvements on the Property or Improvements reasonably necessary to serve the Property.

The Declarant hereby reserves to itself, its successors and assigns, the right to: (a) use any Lots owned or leased by the Declarant, any other Lot with the written consent of the Owner thereof, or any portion of the Common Area, as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas for the marketing and sale of Lots; and (b) install and maintain on the Common Area, any Lot owned or leased by the Declarant or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which the Declarant deems necessary in connection with the marketing and sale of the Lots.

### **3.5 Easement in Favor of Association.**

The Lots (excluding, however, the interior of any completed and occupied Residential Unit), are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

- A. For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;
- B. For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;
- C. For correction of emergency conditions in one or more Lots;
- D. For the purpose of enabling the Association, the Board, the Design Review Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Community Documents; and
- E. For inspection of the Lots in order to verify that the provisions of the Community Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

### **3.6 Easement for Encroachments.**

There is hereby created an easement on behalf of the Declarant and the Association, and their respective agents, employees, representatives and contractors, upon, across, over and under the Common Area and the Lots for all encroachments upon the Common Area and the Lots which are minor or inconsequential in nature and do not materially interfere with the intended use of the burdened Property arising out of the construction of the initial Property infrastructure Improvements and the replacement thereof.

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If any Improvements on any Lot or portion of the Common Area now or hereafter encroach on any other portion of the Property by reason of: (a) the original construction thereof; (b) deviations within normal construction tolerances in the Maintenance of any Improvement; or (c) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's negligence or willful misconduct.

### **3.7 Access Gates.**

Electronically activated access gates may be constructed at one or more entrances to the Property or at the entrances to a portion of the Property in order to limit access and provide more privacy for the Owners and the other Residents and Lessees. Each Owner, Lessee and Resident acknowledges and agrees that the access gates do not guarantee the safety or security of the Owners, Lessees or Residents or their guests or guarantee that only authorized persons will gain access to the gated portions of the Property. Each Owner, Lessee and resident, and their families, guests and invitees, acknowledge and agree to assume the risk that the access gates may restrict or delay entry into, or access within, certain areas by police, fire department, ambulances and other emergency vehicles or personnel. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner, Lessee or Resident or their families, guests, invitees or any third party for any claims or damages resulting, directly or indirectly, from the construction, existence, operation or maintenance of the access gates.

### **3.8 Location of Easements.**

- A. Use and Benefit Easements. With the exception of Lots 1, 22, 33, 50, 51, 62, 63, 80, 81, 92, 93, 107, 108, and 120, as depicted on the Plat, all Lots within the Property are both burdened and benefited by a use and benefit easement ("UBE"). The UBE is then divided into a "Driveway Easement" and "Side Yard Easement." For purposes of illustration only, these easements are depicted on Exhibit B,

attached hereto. The actual location and dimension of each UBE shall be established by the as-built location of the driveways, fence walls, and Residences on each affected Lot.

B. Driveway Easement. The Driveway Easement burdens those Lots having a garage forward Residence (the "Burdened Lot"), as represented by Lot A on Exhibit B, and benefits those Lots having a garage back Residence (the "Benefited Lot"). The general location of the Driveway Easement is the portion of Lot A upon which the driveway serving Lot B is actually constructed, together with the adjacent portion of Lot A up to the exterior wall of the garage on Lot A (the total width of the Driveway Easement being approximately five (5) feet).

C. Side Yard Easement. The Side Yard Easement burdens those lots having a garage back Residence (the "Burdened Lot"), as represented by Lot B on Exhibit B, and benefits those Lots having a garage forward Residence (the "Benefited Lot"). The general location of the Side Yard Easement is the portion of Lot B separated from the remainder of Lot B by both a fence wall and the exterior wall of the garage on Lot B (the total width of the Side Yard Easement being approximately five (5) feet).

D. Purposes of Driveway Easements. A Driveway Easement may be used by the Owner of the Benefited Lot (and such Owner's occupants, guests, invitees, licensees, agents, or contractors) for driveway purposes (including, without limitation, for parking of vehicles, ingress and egress of vehicles and pedestrians into and out of the garage and the Residence on the Benefited Lot and drainage), subject to the restrictions contained in this Declaration. Subject to the other provisions of this Declaration, a Driveway Easement shall be exclusive in favor of the Benefited Lot and its Owners.

E. Purposes of Side Yard Easements. A Side Yard Easement may be used by the Owner of the Benefited Lot (and such Owner's occupants, guests, invitees, licensees, agents, or contractors) as part of the rear yard of the Benefited Lot (including, without limitation, for landscaping, drainage, and maintenance purposes), subject to the restrictions contained in the Declaration. Without limiting the generality of the foregoing, rainwater may drain from the roof of the Residence on the Burdened Lot into the Side Yard Easement. Subject to the other provisions of this Declaration, a Side Yard Easement shall be exclusive in favor of the Benefited Lot and its Owners.

F. Restrictions on Uses of Driveway Easements. Driveway Easements and the uses thereof by the Owner of the Benefited Lot (and such Owner's occupants, guests, invitees, licensees, agents, or contractors) shall be subject to the following conditions, restrictions and limitations:

(i) rainwater may drain from the roof of the Residence on the adjacent Burdened Lot onto the Driveway Easement (including, without limitation, onto the driveway situated thereon).

(ii) the driveway situated on the Driveway Easement shall not be widened, extended or otherwise altered from its original configuration as constructed by Declarant.

(iii) no changes or alterations shall be made to any part of the Driveway Easement, or anything placed therein or thereon, which would or might alter the slope or drainage pattern of or across such Driveway Easement.

(iv) with the exception of washing a vehicle, no water shall be discharged (including, without limitation, backwash or discharge of water from a swimming pool or spa) within or into the Driveway Easement.

(v) no vehicles, trailers or other equipment of any kind shall be parked, placed or kept on any portion of the Driveway Easement other than on the paved driveway thereon (and then only in compliance with this Declaration), and no vehicles, trailers or other equipment shall be serviced or repaired on any portion of the Driveway Easement (including, without limitation, on the paved driveway thereon).

(vi) neither the Owner of the Benefited Lot nor such Owner's occupants, agents, or contractors shall install any landscaping, irrigation systems or Improvements of any kind on unpaved portion of the Driveway Easement, and the Owner of the applicable Burdened Lot shall have the right and responsibility to install and maintain landscaping and related irrigation systems in such unpaved portions of the Driveway Easement (so long as the same do not encroach upon or otherwise interfere with use of the Driveway Easement by the Owner of the Benefited Lot and such Owner's occupants, guests, invitees, licensees, agents, or contractors for the purposes permitted under this Declaration).

(vii) no tree shall be placed such that the center of such tree is within five (5) feet of the fence wall or the exterior wall of the Residence on the adjacent Benefited Lot.

(viii) the Benefited Lot Owner shall have the exclusive right to use the Driveway Easement on the adjacent Burdened Lot except as provided in this Declaration and the Burdened Lot Owner shall not block, obstruct or restrict access or use of or permit anyone to block, obstruct or restrict access or use of the Driveway Easement by the Owner of a Benefited Lot, or its occupants, guests, invitees, licensees, agents, or contractors or other Persons.

(ix) maintenance and repair of the Driveway Easement shall be the sole responsibility and at the expense of the Owner of the adjacent Benefited Lot.

G. Restrictions on Uses of Side Yard Easements. Side Yard Easements and the uses thereof by the Owner of the Benefited Lot (and such Owner's occupants, guests, invitees, licensees, agents, or contractors) shall be subject to the following conditions, restrictions and limitations:

(i) no modifications shall be made to the slope or grading design of the Side Yard Easement (or the adjacent rear yard of the Benefited Lot), including, among other things, any modification which would cause water to pool against the fence wall or the exterior wall of the Residence on the adjacent Burdened Lot, or which might otherwise damage or undermine any such wall or the foundation of such Residence.

(ii) no excavation shall be permitted anywhere within the Side Yard Easement.

(iii) no materials shall be placed or stored within the Side Yard Easement which might attract noxious or hazardous insects or other pests including, without limitation, termites, venomous spiders or snakes, roaches, etc.

(iv) no swimming pools, spas, hot tubs, concrete pads, cool decking or other structures or pavements of any kind, whether temporary or permanent, shall be placed wholly or partly within the Side Yard Easement.

(v) no water shall be discharged (including, without limitation, backwash or discharge of water from swimming pool or spa) within or into the Side Yard Easement.

(vi) no wood, gasoline, propane or other combustible materials, barbecue grills, outdoor "pot belly" or other type of fireplaces, outdoor space heaters or dangerous chemicals of any kind shall be placed, stored or used within the Side Yard Easement in the area that is immediately adjacent to the exterior wall of the Residence on the Burdened Lot.

(vii) no shrubs, ground cover, landscape materials (excluding decomposed granite), perennial or annual flowers, or grasses of any type, sprinklers or irrigation system shall be placed or used within three (3) feet of the fence wall or the exterior wall of the Residence on the adjacent Burdened Lot, and no other activity shall be conducted within the Side Yard Easement which does or might cause water to pool next to such wall or which does or might otherwise damage, degrade or otherwise impair any such walls or the foundation of such Residence.

(viii) no tree shall be placed such that the center of such tree is within five (5) feet of the fence wall or the exterior wall of the Residence on the adjacent Burdened Lot.

(ix) neither the Owner of the applicable Benefited Lot nor such Owner's occupants, guests, invitees, licensees, agents, or contractors shall attach anything, either permanently or temporarily, to the exterior wall of the Residence on the adjacent Burdened Lot, or do anything which would otherwise damage or alter such exterior wall or the fence wall attached thereto.

(x) rainwater may drain from the roof of the Residence on the adjacent Burdened Lot onto the Side Yard Easement.

(xi) the Owner of the Burdened Lot (or such Owner's occupants, agents, or contractors) shall have the right, at reasonable times and on prior notice to the Owner of the Benefited Lot (except in the case of an emergency, where no such prior notice shall be required), and with as little interference with the activities and privacy of the Owner of the Benefited Lot and such Owner's occupants and guests as is reasonably possible, to enter upon the rear yard of the Benefited Lot for purposes of painting, repairing, maintaining, and inspecting the exterior wall and roof of the Residence on such Burdened Lot, as well as periodic spraying for insects and other pests.

(xii) the Benefited Lot Owner shall have the exclusive right to use the Side Yard Easement on the adjacent Burdened Lot except as provided in this Declaration and the Burdened Lot Owner shall not block, obstruct or restrict access or use of or permit anyone to block, obstruct or restrict access or use of the Side Yard Easement by the Owner of a Benefited Lot, or its occupants, guests, invitees, licensees, agents, or contractors or other Persons.

(xiii) maintenance and repair of the Side Yard Easement shall be the sole responsibility and at the expense of the Owner of the Benefited Lot.

Unofficial Document

H. Further Restrictions and Rights and Duties of Owners. The rights and duties of Owners of Benefited Lots and Burdened Lots (and their respective occupants, guests, invitees, licensees, agents, or contractors) shall be as follows:

(i) Each Owner shall obtain and maintain in full force and effect, at such Owner's expense, a policy or policies of insurance issued by insurers authorized to provide such insurance in the State of Arizona, in forms and amounts commonly obtained and maintained by homeowners for similar properties in the greater Tempe, Arizona area, which provides liability coverage with respect to the acts and negligence of such Owner and the members of such Owner's household on or about such Owner's Lot (including, without limitation, on any Driveway or Side Yard Easement benefiting such Owner's Lot), and shall also add incidental workers' compensation coverage to protect against claims by workers injured on or about such Owner's Lot (including, without limitation, on any Driveway or Side Yard Easement benefiting such Owner's Lot).

(ii) Except to the extent arising from a breach of any provision of this Declaration by, or from an affirmative act of negligence or recklessness by, the Owner of a Burdened Lot (or its occupants, guest, invitees, licensees, agents, or contractors, or other Persons for whom such Owner is legally responsible), the Owner of a Burdened Lot shall not be personally liable to any Owner, or to any other Person, for any claim, damage, loss, liability, cost or expense suffered as a result of, or arising out of, any accident or other occurrence causing injury to any Person and/or damage to any Property by reason of or in connection with the use of any Driveway or Side Yard Easement on such Burdened Lot, and the Owner of the adjoining Benefited Lot agrees to indemnify, protect, defend and hold harmless the Owner of such Burdened Lot, and its successors and assigns, for, from and against each and every such claim, damage, liability, loss, cost and expense arising out of or in connection with such accident or occurrence.

(iii) Each Easement shall be appurtenant to the applicable Benefited Lot, and shall inure to the benefit of and be binding upon the Owner of the applicable Benefited Lot and their

successors and assigns. The rights and obligations of the Owner of the applicable Burdened Lot shall run with the applicable Burdened Lot and shall be binding upon and enforceable against the Owner or the applicable Burdened Lot and its successors and assigns.

(iv) No door, window or other opening of any kind shall be permitted in the wall of a Residence forming part of the boundary of the Driveway or Side Yard Easement, except as originally installed by the Declarant (and in the case of any or other openings originally installed by the Declarant, any glass therein shall be repaired or replaced only with frosted, obscured or opaque glass or glass blocks substantially the same in color, appearance and opacity to that being repaired or replaced).

(v) No Owner or other Person shall erect, construct, maintain, permit, or allow any fence, landscaping or other Improvement or other obstruction or alteration of grading (a) which would interrupt the normal drainage of a Lot from its natural or improved state existing on the date that Lot was first conveyed by the Declarant to another Owner, or (b) within any area designated on the plat described on **Exhibit A** as a "Drainage Easement" (or similar designation).

(vi) No Owner or other Person shall erect, construct, maintain, permit or allow any fence, landscaping or other Improvement or other obstruction or alteration of grading which would interrupt any physical or chemical termite "barrier" of the Lot in the improved state existing on the date the Lot was first conveyed by the Declarant to another Owner.

Except as otherwise provided in this Section 3.8, all obligations with respect to the use, maintenance, and repair of a Driveway or Side Yard Easement (and any Improvements thereon) shall be the responsibility of the Owner of the Benefited Lot. Except as otherwise provided herein, the Owner of a Burdened Lot shall have no obligation whatsoever to care for, protect or insure the Driveway or Side Yard Easement on such Owner's Lot (or any Improvements in or on such Driveway or Side Yard Easement), except to refrain from causing damage thereto through negligence, recklessness, or willful, wrongful or intentional misconduct. The Owner of the <sup>Unofficial Document</sup> Lot shall be responsible for real property taxes and assessments applicable to such Owner's entire Lot without allocation or proration to the Owner of the Benefited Lot.

I. Enforcement of UBE Rights and Obligations. The Association shall have the right, but not the obligation to enforce the rights and obligations of the UBE as herein explained upon the written request of any affected Owner.

### **3.9 Disclaimer of Representations and Implied Covenants.**

Declarant makes no representation or warranty that the Property will be developed in accordance with the zoning and development plan for the Property as it exists as of the Recording of this Declaration. Any such change in the development plan shall be subject to the approval of the City of Tempe. Each Owner, Lessee, Resident and other Person acquiring any Lot or other property within the Property acknowledges that the zoning and development plan may be amended from time to time by the City of Tempe. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to the Property. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of the Property.

### **3.10 Conveyance or Encumbrance of Common Area.**

The Common Area, except any portion thereof dedicated to the public on the Plat, shall be conveyed to the Association by special warranty deed, free and clear of all monetary encumbrances, including, but not limited to, delinquent taxes and assessments. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B Member of the Association. After the termination of the Declarant Control Period, the prior written consent or the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members of the

Association shall be required. Notwithstanding the foregoing, the Association shall have the right to grant utility easements upon, across, over and under the Common Area, the right to convey portions of the Common Area to correct minor encroachments upon the Common Area which do not materially interfere with the intended use of the Common Area and the rights pursuant to Section 3.9.

**3.11 Dedications and Easements Required by Governmental Authority.**

The Declarant hereby reserves to itself and its successors and assigns, the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

**3.12 Further Assurances.**

Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate the reservations of rights and easements contained in this Article 3, whether or not set forth in the conveyance instrument. The easements granted and reservations made by the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by the Declarant. Upon written request of the Declarant, the Association and each Owner shall, from time to time, sign, acknowledge and deliver to the Declarant, such further assurances of these reservations of rights and easements as may be requested.

**3.13 Duration of Development Rights; Assignment.**

The rights and easements reserved by or granted to the Declarant pursuant to this Article 3 shall continue so long as the Declarant owns one or more Lots. The Declarant may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or Maintenance on any portion of the Property.

**3.14 Association Powers and Rights.** Unofficial Document

The Association's exercise of the rights, powers and easements granted in this Article 3 are not subject to the time limitations on duration applicable to the Declarant. If the Declarant requests that the Association exercise its powers under this Article 3, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

**3.15 Easement for Maintenance and Enforcement.**

The Association and its directors, officers, agents, contractors and employees, the Design Review Committee and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Residence), for: (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents; (b) making inspections in order to verify that all Improvements on a Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Design Review Committee, and that all Improvements are being properly maintained as required by the Community Documents; (c) correcting any condition originating in a Lot or in the Common Area threatening another Lot or the Common Area; (d) performing installations or Maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for Maintenance; or (e) correcting any condition which violates the Community Documents.

**3.16 Rights of Declarant.**

Notwithstanding any other provision of this Declaration to the contrary, Declarant shall have the right to maintain model homes and sales offices on Lots owned or leased by the Declarant, and to construct and maintain parking areas for the purpose of accommodating persons visiting such model homes and sales offices. Notwithstanding any other provision of this Declaration to the contrary, Declarant may store supplies of brick, block, lumber and other building materials on a Lot owned or leased by Declarant during the course of construction of Improvements on Lots. In addition, normal construction activities of the Declarant in connection with the construction of Improvements shall not be considered a nuisance or otherwise prohibited by this Declaration.

## ARTICLE 4

ARCHITECTURAL CONTROL**4.1 Approval Required.**

A Design Review Committee shall be established pursuant to this Declaration and shall consist of three (3) natural persons, the majority of which shall constitute a quorum, and the concurrence of the majority shall be necessary to carry out the provisions applicable to the Committee. In the event of death or resignation of any of the Committee members, the surviving members of the Committee shall have full authority to appoint another person to fill the said vacancy. The initial Committee will consist of three (3) persons to be appointed by Declarant in its sole discretion during the Declarant Control Period. At the termination of the Declarant Control Period, the initial Committee shall be released from responsibility and a new Committee shall be selected which shall consist of three (3) Members. The term for which each Committee Member shall serve shall be four (4) years, plus any time required to duly select a successor Committee Member, unless such Member shall have died or resigned prior to such time. The Members on the Committee shall be selected by a two-thirds (2/3) majority vote of the Owners voting in person or by proxy, at a meeting duly called for that purpose. No Member may serve on the Committee for more than two (2) consecutive terms at a time. .

As used in this Article 4, "Construction" means any devegetation, excavation or grading work, or the construction, erection or installation of an Improvement on a Lot. "Modification" means any addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot. Except as expressly provided in this Declaration, no Construction or Modification shall be made or done without the prior written approval of the Design Review Committee.

Any Owner desiring approval by the Design Review Committee for any Construction or Modification shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the Construction or Modification which the Owner desires to perform. The written request for approval shall be on a form approved by the Design Review Committee. Unofficial Document for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, materials and location of the Improvements, and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Design Review Committee shall submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request.

The Design Review Committee shall approve or disapprove a completed application for approval within forty-five (45) days after the Design Review Committee acknowledges receipt in writing of a completed application, including but not limited to the plans and specifications for Construction of any Improvements and/or Modifications, and such other information as may be required by the Design Review Committee. The Design Review Committee shall give written notice that it has received a completed application, which shall then commence the forty-five (45) day review period. The application shall not be deemed to be received until the Design Review Committee has received any fee payable pursuant to Section 4.6 and any supporting information, plans and specifications requested by the Design Review Committee. In the event that the Design Review Committee shall fail to approve or disapprove of an application within forty-five (45) days of submission or acknowledgement of a completed application, approval will not be required, and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar Construction or Modification subsequently submitted for approval.

If any Owner shall intend to use any temporary fencing to store materials or utilize in connection with the Construction of any Improvement or Modification, the Owner shall set forth in its application the intent to erect temporary fencing for such purpose. In addition, in the event that the Owner intends to use any heavy construction equipment or construction equipment which creates significant noise, the Owner shall so state its intention to utilize such equipment, and the approval by the Design Review Committee may further condition the time and date during which such equipment may be utilized.

The provisions of this Article do not apply to, and approval of the Design Review Committee shall not be required for, any Construction or Modification or any other work made by, or on behalf of, Declarant. The approval

required of the Design Review Committee pursuant to this Article 4 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.

Each Owner should be aware that construction may affect the warranty of a Residence. Owners are advised to contact the builder for additional information.

The decisions of the Design Review Committee shall be conclusive, but the Board shall be solely responsible for the enforcement of the decisions of the Design Review Committee.

#### **4.2 Review of Plans.**

In reviewing plans and specifications for any Construction or Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant, including, but not limited to: (a) the harmony of the proposed Improvements with existing Improvements in the Property or with Improvements previously approved by the Design Review Committee but not yet constructed; (b) the location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; (c) the exterior design, finish, materials and color of the proposed Improvements; and (d) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, in its sole and absolute discretion, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive. Decisions of the Design Review Committee may be based on purely aesthetic and subjective considerations. Each Owner acknowledges that determinations as to such matters are purely subjective, and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

The Design Review Committee, by resolution, <sup>Unofficial Document</sup> may exempt certain Construction or Modifications from the application and approval requirements of this Article, provided such Construction or Modifications are undertaken in strict compliance with the requirements of such resolution. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild an Improvement in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a Residence without approval of the Design Review Committee so long as such work does not affect the exterior appearance of the Residence.

#### **4.3 Variances.**

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

#### **4.4 Construction of Improvements.**

Upon receipt of approval from the Design Review Committee for any Construction or Modification, the Owner who had requested such approval shall commence the Construction or Modification approved by the Design Review Committee, within ninety (90) days after the date the Construction or Modification was approved by the Design Review Committee, and shall diligently pursue such Construction or Modification so that it is complete

within six (6) months from the date of approval by the Design Review Committee. If the Construction or Modification is not commenced within the time period presented in this Section, the Design Review Committee may revoke its prior approval of the Construction or Modification. Construction of Improvements shall occur only between the hours of 6:30 a.m. and 6:00 p.m., Monday through Saturday. No Construction shall be performed on Sundays.

**4.5 No Changes Without Approval.**

Any Construction or Modification approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee.

**4.6 Review Fee.**

The Design Review Committee may require with each submission a one time review fee of \$250.00 for the cost of consultants or other professionals to assist the Committee in its duties hereunder. The Association may retain architects, engineers or other persons as deemed necessary to review applications or otherwise assist the Design Review Committee.

**4.7 New Construction.**

All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations and placed onto any Lot without prior approval.

**4.8 No Warranty.**

The approval by the Design Review Committee of any Construction or Modification shall not be deemed a warranty or representation by the Design Review Committee <sup>Unofficial Document</sup> as to the quality of such Construction or Modification, or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation. An Owner shall be solely responsible for determination as to the necessity of obtaining all compliance with applicable building codes and permit requirements.

**4.9 Conditional Approval.**

The Design Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Design Review Committee in an amount determined by the Design Review Committee to be reasonably sufficient to: (a) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement; and (b) repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Provided there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond or other security shall be released to the Owner upon the completion of the Improvements in accordance with the plans and specifications approved by the Design Review Committee and the Owner's written request to the Design Review Committee.

**4.10 Improvements to Areas of Association Responsibility.**

If plans and specifications submitted to the Design Review Committee pertain to an Improvement which is within an Area of Association Responsibility, so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Construction or Modification, with respect to the Improvement, on the execution by the Owner of an agreement, in form and substance acceptable to the Design Review Committee and the Board, which obligates the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement. Any such agreement shall be Recorded.

#### 4.11 Design Review Committee.

So long as the Declarant owns any Lot, the Declarant shall have the right to determine the number of members on the Design Review Committee, and to appoint and remove the members of the Design Review Committee. At such time as the Declarant no longer owns any Lot, the Board shall have the right to determine the number of members on the Design Review Committee and to appoint and remove the members of the Design Review Committee. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Design Review Committee, and in that event, the actions of the Design Review Committee must be approved by the Declarant before they become effective.

The Design Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (a) the size and height of Residences; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (c) placement of Residences and other buildings; (d) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage; (g) perimeter and screen wall design and appearance; (h) time periods for commencement and completion of any approved construction or modification; and (i) rules and regulations governing construction activities. Any adoption, amendment or repeal of the Design Guidelines after termination of the Declarant Control Period must be approved by the Board. The Design Guidelines shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

Copies of all architectural guidelines, standards and procedures, as adopted and amended, shall be available for inspection at the office of the Association during reasonable business hours.

Notwithstanding any power given to the Design Review Committee pursuant to the CC&R's or any Community Documents, enforcement of the Community Documents and decisions by the Design Review Committee shall be solely by the Board of Directors. <sup>Unofficial Document</sup> The Board of Directors shall be exclusively responsible for determining the manner of enforcement of decisions by the Design Review Committee.

The Design Review Committee shall keep a record of the minutes of all meetings. A quorum for any meeting shall consist of the majority of the regular members of the Design Review Committee, and the concurrence of a majority of the regular members shall be necessary for any decision of the Design Review Committee. The decision of the Design Review Committee shall be final on all matters submitted to it pursuant to the Declaration. Members of the Design Review Committee shall not be entitled to compensation for their services.

Neither the Design Review Committee nor any member thereof shall be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any property; (d) the execution of any estoppel certificate, whether or not the facts therein are correct; or (e) the enforcement of this Declaration and any Design Review Guidelines; provided, however, that with respect to the liability of a Design Review Committee member, such member has acted in good faith on the basis of such information as may be actually possessed by him. The approval of the Design Review Committee of any plans, specifications or other matter shall not be deemed to constitute a waiver of any right to withhold approval of any similar plans, specifications or other matter subsequently submitted for approval. The vote or written consent of a majority of its regular members, at a meeting or otherwise, shall constitute the act of the Design Review Committee.

### ARTICLE 5

#### USE RESTRICTION

##### 5.1 Residential Use.

All Lots and Residences shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residence, except that the Owner, Lessee or other Resident

of a Residence may conduct a business activity within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Property; (c) the business activity does not involve persons coming to the Lot to purchase goods or services or the door-to-door solicitation of Owners, Lessees or Residents in the Property; (d) the use of the Residence for a trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (f) the trade or business is conducted by a Resident or Residents of the Residence with no employee working in or from such Residence who is not a Resident thereof; (g) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or is not in excess of what is customary in a residential neighborhood; (h) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (i) the use of the Residence for a trade or business does not violate any other provision of the Community Documents. Notwithstanding the foregoing, no Lot or Residence, or any portion thereof, shall be used as a bed and breakfast, hotel, motel, temporary lodging, nursing home or similar facility, halfway house, drug rehabilitation or similar facility. No trade or business shall utilize any sign, plaque, monument or other designation that a trade or business is conducted at the Residence.

The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family, and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

## **5.2 Temporary Occupancy and Temporary Buildings.**

No trailer, basement of any incomplete building, <sup>Unofficial Document</sup>rack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a Residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Design Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Design Review Committee; however, this does not apply to the activities of the Declarant.

## **5.3 Nuisances; Construction Activities.**

No rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No Person shall permit any thing or condition to exist upon any Lot which may induce, breed or harbor infectious plant diseases or noxious insects. No condition shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property.

Normal construction activities and parking in connection with the Construction of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the Construction of Improvements may be kept only in areas approved in writing by the Design Review Committee, which may also require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Declarant.

#### 5.4 Antennas.

Owners are prohibited from installing any antennae or "dish" on a Lot or on the exterior of a Residence for any purpose, except for: (i) an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (ii) an antenna that is designed to receive video programming service or wireless internet service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, that is one meter or less in diameter or diagonal measurement (collectively, "Devices"). Any antenna that is designed to receive television broadcast signals shall be installed in the attic of the Residence.

A. Location of Devices: Devices shall be located in the Residence pursuant to the following hierarchy of locations:

(i) located in the attic, crawl space, garage, or other interior space of the Residence, or within another approved structure on the Residence, so as not to be Visible From Neighboring Property, or if such location is not reasonably practicable, then;

(ii) located in the rear yard of the Residence (i.e., the area between the plane formed by the front facade of the Residence and rear lot line) and set back from all lot lines at least such distance as may be established in the Design Guidelines or by the Design Review Committee, or, if such location is not reasonably practicable, then;

(iii) attached to or mounted on a deck or patio and extending no higher than the eaves of the portion of the roof of the Residence directly in front of such antenna, or if such location is not reasonably practicable, then;

(iv) attached to or mounted on the rear wall of the Residence so as to extend no higher than the eaves of the Residence at a point directly above the position where attached or mounted to the wall; provided that,<sup>Unofficial Document</sup>

(v) if an Owner reasonably determines that a Device cannot be located in compliance with the foregoing portions of this Section 5.4 without precluding reception of an acceptable quality signal, then the Owner may install such Device in the least conspicuous alternative location within the Residence where an acceptable quality signal can be obtained; provided that;

(vi) Devices shall be reasonably screened from view from the street or any other portion of the Properties, and shall be subject to any rules and regulations adopted by the Board, establishing a preferred hierarchy of alternative locations, so long as the same do not unreasonably increase the cost of installation, or use of the Device.

Declarant or the Association may, but are in no way obligated to, provide a master antenna or cable television antenna for use of all or some Owners. Declarant may grant easements for installation, maintenance, repair and/or replacement of any such master or cable television service.

#### 5.5 Trash Containers and Collection.

No garbage or trash shall be placed or kept on any Lot except for bulk collection on pick up days, except in covered containers of a type, size and style which are approved by the Design Review Committee. In no event shall such containers be kept or placed on a Lot so as to be Visible From Neighboring Property, except to make the same available for collection, and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

### 5.6 Utility Service.

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

### 5.7 Overhead Encroachments.

No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Design Review Committee.

### 5.8 Animals.

No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that a reasonable number of dogs, cats, parakeets or similar household birds may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. As used in this Declaration, a reasonable number shall ordinarily mean not more than three (3) pets per household. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

The Board may adopt rules and regulations further restricting and governing animals within the Property, which rules may include, without limitation rules providing for the removal from the Property of a domestic pet which has bitten or attacked a person or other animal, has a propensity to attack Persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Residents.

### 5.9 Machinery and Equipment.

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with residential use of property or machinery or equipment necessary for the construction of a Residence, building, structure, or other Improvement on the Lot.

### 5.10 Signs and Poles.

The Declarant may erect, post or display signs on the Common Area or any Lot owned by the Declarant. Except as provided above, no signs whatsoever (including, but not limited to, commercial, political, religious and similar signs) which are Visible From Neighboring Property shall be erected or maintained on a Lot or the Common Area, except (a) signs required by legal proceedings; (b) not more than one identification sign for each Lot with a face area of seventy-two (72) square inches or less; and (c) such other signs (including but not limited to "for sale" and "for lease" signs, garage sale signs, construction job identification signs, builders' signs, directional signs and

subdivision identification signs) which are in conformance with the requirements of Maricopa County and/or the City of Tempe, as applicable, and which have been approved in writing by the Design Review Committee or the Declarant as to size, colors, design, message, content and location.

No Owner or Resident shall erect any flagpoles without approval by the Design Review Committee. No Owner shall erect any flags, except as provided by applicable Arizona law with respect to display of American flags, without approval of the Design Review Committee. The Design Review Committee reserves the right to restrict the size of any flag in its sole discretion. The Design Review Committee may utilize its Design Review Guidelines to limit the display of excessive religious decorations.

#### **5.11 Further Subdivision, Property Restrictions, Rezoning and Timeshares.**

Without the prior written approval of the Board, no Owner, other than the Declarant, shall do any of the following: (a) further subdivide a Lot or otherwise separate the Lot into smaller lots; (b) convey or transfer less than all of a Lot; or (c) replat a Lot or combine the Lot with other Lots. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration. No Lot shall be subjected to or used for any timesharing, cooperative, weekly, monthly or any other type of revolving or periodic occupancy, by multiple owners, cooperators, licensees or timesharing participants.

#### **5.12 Vehicles and Parking.**

A. Motor Vehicles. As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (b) "Streets" means the public or private streets shown on the Plat.

Private, non-commercial, passenger <sup>Unofficial Document</sup> automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or ninety-six (96) inches in width or two hundred sixty-two (262) inches in length, may be parked within a garage or in a private driveway appurtenant to a Dwelling Unit, but except as provided in the next sentence, may not be parked elsewhere on the Property or streets adjoining the Property. The preceding sentence shall not preclude occasional overflow parking in a street right-of-way for guests or other reasonable purposes, provided that no inconvenience is imposed on the Owners or Occupants of other Lots.

No Motor Vehicle (including, but not limited to, mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, permanent tents, or similar vehicles or equipment, commercial vehicles, or vehicles exceeding one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or ninety-six (96) inches in width, or two hundred sixty-two (262) inches in length or similar vehicles or equipment) shall be kept, placed or maintained upon the Property or any roadway adjacent thereto, except: (a) within a fully-enclosed garage appurtenant to a Dwelling Unit; or (b) in such areas and subject to such rules and regulations as the Board may designate and adopt in its sole discretion (and the Board in its sole discretion may prohibit such other vehicles and equipment completely).

B. Regulation. It is the intent of this Section to regulate and limit the type of Motor Vehicles at the Property. It is the further intent to regulate and limit the parking, storage and repair of Motor Vehicles in the garages, Lots, driveways, streets and Common Area.

C. Common Areas. Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored at the Common Area. No Motor Vehicles designed or used for transporting passengers for a fee or for carrying merchandise, supplies or equipment for commercial purposes may be parked on the Common Area, except for the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents.

No recreational vehicle, motor home, mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area.

D. Streets. Except as permitted by this Section, no Motor Vehicles may be parked, kept or stored in the streets. No Motor Vehicles designed or used for transporting passengers for a fee or for carrying merchandise, supplies or equipment for commercial purposes may be parked on the streets, except for the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents.

Private, non-commercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or ninety-six (96) inches in width or two hundred sixty-two (262) inches in length, owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the Streets if space for the parking of the Motor Vehicle is not available in all of the following areas: (a) the garage situated on the Lot of the Owner, Lessee or Resident; (b) the driveway on the Lot constructed as part of the initial construction of Improvements on the Lot by a Declarant; or (c) a driveway expansion constructed on the Lot with the approval of the Design Review Committee.

E. Driveways. It is the intent of this Section to limit the parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of the Lot in the driveway and in any driveway expansion situated on the Lot. Accordingly, Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage situated on the Lot to the extent space is available in the garage for the parking of such Motor Vehicles. Private, non-commercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or ninety-six (96) inches in width or two hundred sixty-two (262) inches in length, owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot only if parking is not available in the garage. Parking of private, non-commercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or ninety-six (96) inches in width or two hundred sixty-two (262) inches in length, owned or leased by an Owner, Lessee or Resident of a Lot may only be parked on a driveway expansion constructed with the approval of the Design Review Committee if space for the parking of such Motor Vehicles is not available in the garage. Private, non-commercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, eighty-four (84) inches in height or ninety-six (96) inches in width or two hundred sixty-two (262) inches in length, is not available in the garage or in the driveway constructed as part of the initial construction or Improvements on the Lot.

F. Lots. No Motor Vehicle of any kind may be stored on a Lot except in a garage. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material.

No recreational vehicle, motor home or similar vehicle may be parked or kept on a Lot in such a manner as to be Visible From Neighboring Property.

No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property. No inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property. No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot, on the Streets or any other part of the Common Area. With the exception of those Motor Vehicles completely contained within the garage of a Residence, no inoperable Motor Vehicle may be stored or parked on any Lot, the Streets or any other part of the Common Area.

Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be temporarily parked in the driveway on a Lot or on the Streets or in designated parking spaces on the Common Area.

No mobile home, motor home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property, except that a recreational vehicle, motor home, mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle owned or leased by an Owner, Lessee or Resident may be parked in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board.

G. **Rulemaking Authority.** The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on any Lot, the Streets or Common Areas and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board of Directors, the provisions of this Section shall control.

H. **Exclusion for Declarant.** The provisions of this Section 5.12 will not apply to (a) Motor Vehicles of the Declarant or its respective employees, agents, affiliates, contractors or subcontractors during the course of construction activities or sales activities upon or about the Property, or (b) Motor Vehicles used by the Association and repairing, maintaining and replacing the Areas of Association Responsibility and all Improvements thereon, and performing all of the rights, duties and obligations of the Association under this Declaration.

**5.13 Drainage.**

No Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Property, or any part thereof, or for any Lot as shown on the approved drainage plans on file with the County. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans.

**5.14 Garages.**

Garages shall be used for parking vehicles and storage only and shall not be used or converted for living or recreational activities. The interior of all garages shall be maintained and kept in a neat, clean and slightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

**5.15 Rooftop HVAC Equipment Prohibited.** Unofficial Document

No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Residence or other building so as to be Visible From Neighboring Property.

**5.16 Basketball Goals and Backboards.**

Except as expressly permitted by the Design Guidelines, no portable basketball goal or backboard shall be constructed, installed or maintained on any Lot. Permanent basketball goals or backboards may be kept on a Lot provided they are kept and used in accordance with the Association Rules which may govern their size, design, color, material, location and hours of use. All permanent goals and backboards must be approved by the Design Review Committee prior to installation.

**5.17 Playground Equipment.**

No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Design Review Committee.

**5.18 Rental of Lots.**

No Owner may lease less than his entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of the Community Documents, and that any violation of this Declaration or the Association Rules by the lessee or the other occupants shall be a default under the lease. There shall be no subleasing of Residences or assignments of leases.

Prior to commencement of possession, the Tenant shall execute and deliver to the Association in a form approved by the Association, stating that the proposed Tenant acknowledges receipt of copies of this Declaration,

the Design Guidelines, and the Association Rules, and agrees to be bound by them. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) a copy of the Lease; (b) the names of each of the Lessees and each other person who will reside in the Residence during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases his Lot and the Residence situated thereon must provide the Lessee with copies of this Declaration, the Design Guidelines and the Association Rules.

Any lease of a Lot or Residence situated thereon must be for an initial term of at least six (6) months. The Owner shall be liable for any violation of this Declaration, the Design Guidelines or the Association Rules by the Lessees or other persons residing in the Residence and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

#### **5.19 Lights.**

Except as initially installed by the Declarant, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property, except as approved by the Design Review Committee.

#### **5.20 Window Cover Materials.**

Within sixty (60) days after becoming the Owner of a Lot, the Owner shall install permanent draperies or suitable window coverings on all windows facing a street. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, and no sheets, bedding or similar items shall be installed or placed upon the outside or inside of any windows of a Residence without the prior written approval of the Board. Except as permitted by this Section, no enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence shall be <sup>Unofficial Document</sup> constructed or installed without the prior written consent of the Board.

#### **5.21 Repair of Building.**

No building or structure on any Lot shall be permitted to fall into disrepair, and each such building or structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished in compliance with this Declaration and the Design Review Guidelines. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by this Declaration and the Design Review Guidelines, such building or structure shall be promptly repaired, rebuilt or demolished. In the event an Owner fails to comply with this provision, the Board may give notice to the Owner and may then proceed to repair the building or structure and charge the Owner therefor, as permitted in this Declaration or the Design Review Guidelines, or to take such other and further action as the Board may deem appropriate under applicable law.

#### **5.22 Party Walls.**

Each wall or fence which is located between two (2) Lots shall constitute a party wall. Except as in hereinafter provided, the rights and duties of Owners of contiguous Lots which have party walls shall be as follows:

A. Each Owner shall have the right to use the party wall, provided that such use does not interfere with other Owner's use and enjoyment thereof.

B. If a party wall is damaged or destroyed through the act or failure to act of an Owner or any of his tenants, agents, guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to promptly rebuild and repair the party wall without cost to the Owner of the adjoining property.

C. In the event any party wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act or failure to act of an adjoining Owner, his tenants,

agents, guests or family, it shall be the obligation of all Owners whose properties adjoin such party wall to rebuild and repair such wall at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their respective properties on the damaged or destroyed party wall.

D. In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Notwithstanding any such decision, an Owner may seek indemnity from any party causing damage.

E. Notwithstanding the foregoing and unless otherwise indicated in an applicable Recorded document, in the case of party walls (i) between Common Areas and Lots, or (ii) constructed by the Declarant or the Association on Common Areas within a Lot, the Association shall be responsible for all maintenance thereof, subject to the provisions of this Declaration; except that each Owner of a Lot shall remain responsible for painting and maintaining the surface portion of the party wall facing his Lot and/or the portion of the party wall which is not a portion of the Common Area, and except that an adjoining Owner shall reimburse the Association for one-half (1/2) of the costs incurred by the Association for any structural repair of the party wall located on that Owner's property.

#### **5.23 Right of Entry.**

During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Design Review Committee, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot or other area, and the improvements constructed or being constructed thereon (except for the interior portions of any completed and occupied Residential Unit), to determine compliance with the Declaration, the Architectural Guidelines, or any approval stipulations issued by the Design Review Committee or to perform repairs and maintenance as provided hereon, and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the Association shall have an easement and right of entry upon any Lot or other area at any time or times without notice in order to perform emergency repairs.

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#### **5.24 Model Homes.**

The provisions of the Declaration which prohibit nonresidential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes and sales offices and parking areas incidental thereto by persons engaged in the construction or marketing of Residential Units in the Property by Declarant.

#### **5.25 Solar Energy Devices.**

Solar energy devices must be approved by the Design Review Committee prior to installation and may not be Visible From Neighboring Property.

### **ARTICLE 6**

#### **THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS**

##### **6.1 Formation of Association.**

The Association shall be a nonprofit Arizona corporation. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Arizona law and all powers necessary or desirable to perform the Association's duties and obligations and to exercise the rights and powers of the Association set forth in the Community Documents. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration with respect to the operation and maintenance of the Areas of Association Responsibility. The City of Tempe is authorized to maintain common areas if the Homeowner's Association, or others, fail to do so and the City is given the right to assess Members for expenses in connection therewith. The City of Tempe is given authorization to enter the property to perform maintenance

pursuant to this provision and the CC&R's shall not be amended in such a way as to limit the right of the City of Tempe to maintain the property or to collect expenses from the Lot Owners.

## **6.2 Board of Directors and Officers.**

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The initial directors and officers shall be designated in the Articles, and such persons shall serve until their death, resignation or removal from office. Until the earlier of the termination of the Declarant Control Period or such time as the Declarant no longer owns any Lot, the Declarant shall have the right to appoint and remove the members of the Board. After the termination of the Declarant Control Period, the Board shall be elected by the members as provided in the Bylaws. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

A. **Actions of the Board.** On most matters, the Association acts through the Board. However, in some instances the Community Documents or applicable law limit the Board's ability to act without the approval of the Association's members. Unless the Community Documents or Arizona law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

(i) The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Association Responsibility, enforcement of the Community Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

(ii) In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstance), conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the Bylaws.

## **6.3 The Association Rules.**

The Board may adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (b) minimum standards for the Maintenance of Lots; or (c) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

## **6.4 No Personal Liability.**

Neither the Declarant, any manager or member of Declarant, nor any member of the Board, officer, manager or other employee or committee member of the Association shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, negligence, or other matter, of any kind or nature related to his or her involvement in the affairs of the Association, except for acts of fraud or theft, or acts performed intentionally and with malice. The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorneys' fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or member of the Board. The officers, managers and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, including any decision to not institute Proceedings except for their own individual acts performed intentionally and with malice and any acts that are *ultra vires*. The officers, managers and members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on