

When recorded return to:



Wee Hollow, LLC
165 Sombart Lane, #7
Sedona, Arizona 86336

WEE HOLLOW HOME OWNERS ASSOCIATION
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WEE HOLLOW HOME OWNERS ASSOCIATION (the "Declaration") is made and entered into as of this 22 day of April 2020 by Wee Hollow, LLC, an Arizona limited liability company (the "Declarant").

Recitals

As an integral part of this Declaration, Declarant acknowledges and affirms as follows:

1. Declarant is the owner of real property situated in Yavapai County, Arizona, and legally described in Exhibit "A" hereto (the "Property").
2. Declarant desires that the Property be developed into a residential community to be known as Wee Hollow (the "Project").
3. Declarant desires to establish covenants, conditions and restrictions upon the Property, and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Project.
4. Declarant desires to submit and subject the Property, together with all buildings, Improvements and other permanent fixtures of whatever kind now or later located on the Property, and all easements, rights, appurtenances and privileges belonging to or in any way pertaining to the Property, to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained in this Declaration.
5. Declarant desires, for the efficient management of the Property and the Project, to create a homeowners association which will be assigned the powers of managing, maintaining and administering the Common Areas; administering and enforcing the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained in this Declaration including, without limitation, the collection and disbursement of funds pursuant to the assessments and charges hereinafter created; and to perform such other acts as are herein provided or which generally benefit its Members, the Project, and the Property.
6. The Wee Hollow Home Owners Association, a non-profit corporation, will be incorporated by Declarant under the laws of the State of Arizona for the purpose of exercising such powers and functions.
7. Declarant, for the purposes set forth above, declares that the Property shall be held, transferred, sold, conveyed, leased, occupied and subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property, or any part thereof, and shall inure to the benefit of each Owner thereof and the Wee Hollow Home Owners Association.

ARTICLE I

DEFINITIONS

Unless the context clearly states otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of such term capitalized.

1.1 **Architectural Committee** means the committee, which may be established pursuant to Article III of this Declaration.

1.2 **Architectural Guidelines** means those architectural and design guidelines established by the Board and/or Architectural Committee pursuant to Section 3.7 of this Declaration, as the same may be amended from time to time.

1.3 **Articles** means the Articles of Incorporation for the Association, as the same may be amended from time to time.

1.4 **Assessment** means all of the assessments levied and assessed against each Lot pursuant to Article IV of this Declaration, including, without limitation, the following:

1.4.1 **Annual Assessment** means the Assessments levied and assessed against each Lot pursuant to Section 4.3 of this Declaration.

1.4.2 **Benefitted Assessment** means the Assessments levied and assessed by the Board against a particular Lot or Lots pursuant to Section 4.11 of this Declaration.

1.4.3 **Special Assessment** means the Assessments levied and assessed against each Lot pursuant to Section 4.12 of this Declaration.

1.4.4 **Reserve Contribution** means the Assessments levied and assessed against each Lot upon the sale or transfer of each Lot pursuant to Section 4.8 of this Declaration.

1.4.5 **Resale Assessment** means the Assessments levied and assessed against each Lot upon the sale or transfer of each Lot pursuant to Section 4.9 of this Declaration.

1.4.5 **Working Capital Contribution** means the Assessments levied and assessed against each Lot upon the sale or transfer of each Lot pursuant to Section 4.10 of this Declaration.

1.5 **Association** means the Wee Hollow Home Owners Association, an Arizona non-profit corporation, its successors and assigns.

1.6 **Board** means the Board of Directors of the Association.

1.7 **Bylaws** means the Bylaws of the Association adopted in accordance with the Articles, as the same may be amended from time to time.

1.8 **Common Area** means all of the Tracts shown on the Plat, together with all Improvements situated thereon; all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold or easement interest for as long as the Association is the Owner of such interest; and all other areas that the Association is responsible for; except Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment Lien or by any deed in lieu of foreclosure.

1.9 **Common Expense** shall mean the actual and estimated costs incurred by the Association in administering, maintaining and operating the Project, including, but not limited to:

1.9.1 Maintenance, management, operation, repair and replacement of the Common Area, compensation paid to property managers, accountants, attorneys and other professionals.

1.9.2 Costs of utilities, including but not limited to water, electricity, solar power, gas, sewer, trash pick-up and disposal, landscaping maintenance and fire protection services, which are provided to the Association and which are not individually metered or assessed to the Owners, and other services which generally benefit and enhance the value and desirability of the Project and which are provided by, or on behalf of, the Association.

1.9.3 Costs of insurance covering the Common Area or the Association; costs of bonding the members of the Board and the officers of the Association; taxes paid by the Association.

1.9.4 Any and all other expenses incurred by the Association for any reason whatsoever in connection with the Common Area, the Property and the Project, or the costs of any other item or items designated by, or to be provided or performed by the Association pursuant to the Project Documents or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.9.5 Reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Association, which Reserve Fund shall be adequate to meet the costs and expenses of maintenance, repair and replacement of the Common Area, which must be maintained, repaired or replaced on a periodic basis.

1.10 **Declarant** means Wee Hollow, LLC, an Arizona limited liability company authorized to do business in Arizona, its successors and assigns, or any person to whom the Declarant's rights hereunder are later assigned by recorded instrument, or any Mortgagee of the Declarant which acquires title to or succeeds to the interest of the

Declarant in substantially all of the Lots or other portions of the Property then owned by the Declarant by reason of foreclosure or trustee's sale under the Mortgage of said Mortgagee, provided, however, that said Mortgagee shall agree by recorded instrument to assume and discharge any obligations of the Declarant under this Declaration.

1.11 **Declarant Control Period** means the period commencing on the date of the recording of this Declaration and ending (i.e. the "Transition Date") upon the occurrence of both of the following:

1.11.1 One hundred percent (100%) completion of the Common Areas, including, but not limited to, the parking and storage structures; and

1.11.2 The sale of twenty-four (24) of the total Lots to Owners other than Declarant;

or upon written notice by the Declarant that it relinquishes its control.

1.12 **Declaration** means this Declaration of Covenants, Conditions and Restrictions for Wee Hollow Home Owners Association, as it may be amended from time to time.

1.13 **Designated Builder** means any Builder that is designated by Declarant in a recorded instrument and by such designation receives certain rights as expressly provided in this Declaration.

1.14 **Improvement** means buildings, driveways, roads, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures, improvements or landscaping improvements of every type and kind.

1.15 **Lot** means a subdivided Lot as shown on the Plat. A Lot shall not include any Common Area or the ownership of the parking structure spaces, on-street parking spaces, or storage spaces. A Lot includes the Residence and any improvements constructed thereon, as well as any easements or appurtenances that touch and concern the Lot.

1.16 **Member** means any Person who owns one or more Lots in the Project and is therefore a Member of the Association.

1.17 **Owner** means the record Owner, whether one or more Persons, of fee simple title, whether or not subject to any mortgage or deed of trust, to any Lot that is part of the Property.

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

1.19 **Plat** means the Plat for Wee Hollow recorded at Book ____ of Maps, Page ____ and Document No. _____, in the official records of the Yavapai County Recorder, State of Arizona, as the same may be amended from time to time.

1.20 **Project** means the planned development of the Property as the residential development known as Wee Hollow.

1.21 **Project Documents** means this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Guidelines, any amendments to any of the foregoing, any duly adopted resolution of the Board and any other document, agreement or covenant pertaining to the Property.

1.22 **Property** means the real property described on the Plat together with all buildings and other Improvements located thereon from time to time, and all easements, rights and appurtenances belonging thereto.

1.23 **Purchaser** means any Person, other than the Declarant or any Designated Builder, who, by means of a voluntary transfer, becomes the Owner of a Lot, except for Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.24 **Reserve Account** means the federally insured bank account(s) maintained by the Association for the segregation and retention of Reserve Funds from the Association's general operating account.

1.25 **Reserves or Reserve Funds** means those amounts specifically collected by the Association for, and in anticipation of, future expenses associated with the proper operation and maintenance of the Association and the repair, replacement and maintenance of the Common Area and Improvements thereon.

1.26 **Residence** means any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

1.27 **Resident** means each occupant, whether an Owner, a member of an Owner's family, a tenant or other occupant legally occupying or actually residing in a Residence built on a Lot.

1.28 **Rules** means the rules and regulations adopted by the Association pursuant to Section 2.3, as the same may be amended from time to time.

1.29 **Single Family** means an individual living alone, a group of two (2) or more Persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) Persons not all so related, who maintain a common household in a Residence.

1.30 **Single Family Residential Use** means the occupancy or use of a Residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal statutes, ordinances, rules and regulations.

1.31 **Visible From Neighboring Property** means, with respect to any given object, that such object is, or would be, visible to a natural Person six feet (6') tall, standing on the same plane as the object being viewed. The Architectural Committee shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the determination of the Architectural Committee shall be binding in that regard, subject to any appeal granted by the Board.

ARTICLE II

THE ASSOCIATION: RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

2.1 **Rights, Powers and Duties.** The Association shall be an Arizona nonprofit 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 under the Project Documents or imposed by law; to exercise the rights and powers of the Association set forth in the Project Documents; and to foster and promote the common good and general welfare of the Property and the Owners and Residents. The Association may exercise any right or privilege given to the Association expressly by the Project Documents or applicable law and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or applicable law or reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents.

2.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted and managed by a Board elected in accordance with this Declaration and the Articles and Bylaws, and such officers and committees as the Board may elect or appoint in accordance with the Articles and Bylaws. The initial directors and officers of the Association shall be designated in the Articles, and such Persons shall serve until their death, resignation, removal from office or until their successors are duly elected as provided in the Bylaws. Until the termination of the Declarant Control Period, the directors of the Association shall be appointed by and may be removed solely by Declarant. After the termination of the Declarant Control Period or such earlier time as Declarant relinquishes its rights to appoint the Board, the directors shall be elected by the Members in accordance with the Bylaws. The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Unless the Project Documents specifically require the vote or consent of the Members and/or Declarant, the Board may do or cause to be done any act on behalf of the Association.

2.3 **Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal the Rules. The Rules may restrict and govern the use of any part of the Property by any Owner or Resident, by the family of such Owner or Resident, or by any invitee, licensee or lessee of such Owner or Resident; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

2.4 **Identify of Members.** Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, become a Member of the Association and shall remain a Member of the Association so long as such Owner owns a Lot.

2.5 **Transfer of Membership.** Membership in the Association shall be appurtenant to each Lot and a Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot, and then only to the Purchaser or any Designated Builder, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

2.6 **Voting Rights.** Each Owner of a Lot, including a Designated Builder, but not including Declarant, shall be entitled to one (1) vote for each Lot owned, subject to the authority of the Board to suspend such voting rights as provided herein. Declarant shall be entitled to three (3) votes for each Lot owned. Upon termination of the Declarant Control Period, Declarant shall be entitled to one (1) vote for each Lot owned.

2.7 **Joint Membership.** When more than one (1) Person is the Owner of any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners of a Lot are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one (1) vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void. After the Declarant Control Period, each Lot may not hold more than one (1) Board seat and no Owner, regardless of the number of Lots owned, may hold more than one (1) Board seat.

2.8 **Corporate Ownership.** In the event any Lot is owned by a corporation, partnership, limited liability company or other entity, the corporation, partnership, limited liability company or entity shall be a Member and shall designate in writing an individual who shall have the power to vote said Membership, and in the absence of such designation, the general partner, chief executive officer, manager or managing member

of such corporation, partnership, limited liability company or entity shall have the power to vote for that Membership.

2.9 **No Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association.

2.10 **Funds.** All funds received by the Association and the titles of all properties acquired by the Association shall be held in trust for the Members of the Association in accordance with this Declaration, the Articles and Bylaws.

ARTICLE III

ARCHITECTURAL CONTROL

3.1 **Approval Required.** No Improvement, which would be Visible From Neighboring Property, including the original construction or installation of a Residence, shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee, which shall have the authority to regulate the external design and appearance of the Lots and all Improvements constructed or installed thereon. No addition, alteration, repair, change or other work which in any way alters the exterior appearance of any part of a Lot, or any Improvements located thereon, which are or would be Visible From Neighboring Property, shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which is or would be Visible From Neighboring Property, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications, which the Architectural Committee may reasonably request.

3.2 **Design Review Fee.** The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Article III, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.3 **Construction Deposit.** The Architectural Committee shall have the right to require a fully refundable construction deposit to ensure compliance with the Declaration, compliance with the approved plans, and to protect the Association against damage to the Common Area, which deposit shall be payable within ten (10) business days following

approval by the Architectural Committee of the submission, but in any event no later than the date construction is to commence. Any such deposit shall be fully refundable to the Owner upon the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee and the Owner's written request for refund to the Architectural Committee, and so long as there is no damage caused to the Common Area by the Owner or its agents or contractors. If an Owner or its agents or contractors cause damage to the Common Area, the Association may use the construction deposit to repair such damage. The Association's costs of repairing such damage beyond the construction deposit shall be paid by the Owner upon demand from the Association and any sum not paid by the Owner shall be Assessed to the Owner's Lot as a Benefitted Assessment and may be collected as set forth in this Declaration.

3.4 Timeline for Review. If the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after receipt of an application that meets all of the requirements of the Project Documents, together with any fee required to be paid, and any additional information, plans, specifications or other requirements requested by the Architectural Committee, the application will be deemed to have been disapproved. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.5 Review of Plans. In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work, which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography, and finish-grade elevation. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee if the Architectural Committee determines, in its sole and absolute discretion, that:

3.5.1 The proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of or does not comply with this Declaration or the Architectural Guidelines;

3.5.2 The proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements on the Property or with Improvements previously approved by the Architectural Committee but not yet constructed;

3.5.3 The proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable;

3.5.4 The proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect the appearance of the Property; or

3.5.5 The proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accordance with the general plan of development for the Property.

The approval required by the Architectural Committee pursuant to this Article III 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. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Article III shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.6 **Architectural Committee.** During the Declarant Control Period, Declarant shall have the sole right to determine (i) if an Architectural Committee will be established or if Declarant or the Board will act in such capacity; (ii) the number of members on the Architectural Committee (if any); and (iii) the appointment and removal of members of the Architectural Committee (if any) at any time, with or without cause. Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event, Declarant may require, if during the Declarant Control Period, that specified actions of the Architectural Committee be approved by Declarant before they become effective. Following the Declarant Control Period, the Board shall have the right to determine (i) if an Architectural Committee will be established or if the Board will act in such capacity; (ii) the number of members on the Architectural Committee (if any); and (iii) the appointment and removal of members of the Architectural Committee (if any) at any time, with or without cause.

3.7 **Architectural Guidelines.** The Architectural Committee, with the approval of the Declarant or the Board as applicable, may adopt, amend and repeal Architectural Guidelines. The Architectural Guidelines may include, without limitation, provisions regarding: (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) placement of Residences and other buildings; (iii) landscape design, content and conformance with the character of the Property and permitted and prohibited plants; (iv) requirements concerning exterior color schemes, exterior finishes and materials; (v) signage; (vi) perimeter and screen wall design and appearance; (vii) standards and procedures to be used in rendering decisions of the Architectural Committee; and (viii) such other limitations and restrictions as the Architectural Committee, in its reasonable discretion, may adopt. Notwithstanding anything herein to the contrary, the Architectural Guidelines may not conflict with this Declaration and this Declaration will prevail in the case of any conflict with the Architectural Guidelines.

3.8 **Decisions and Appeals.** Except as provided in this Section 3.8, the decisions of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. An Owner who submitted a request for approval to the Architectural Committee may, in writing, appeal the Architectural Committee's decision to the Board. The Board shall have the right, but not the obligation, to review an appeal of any decision of the Architectural Committee and the decision of the Board shall in all cases be final and binding.

3.9 **Seasonal Decorations.** Seasonal decorations are exterior improvements, modifications and alterations that generally require the prior written approval of the Architectural Committee. The Board may adopt and amend rules and regulations specific to seasonal decorations that exempt seasonal decorations from the requirements set forth in this Article III.

3.10 **Exclusions.** The provisions of this Article III shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements (including, without limitation, Residences) made by or on behalf of Declarant, nor shall the Architectural Committee's approval be required for the construction of any Residences by any Designated Builder which are constructed in accordance with plans and specifications therefore which have previously been approved by Declarant in writing.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay Assessments to the Association including, without limitation, Annual Assessments, Benefitted Assessments, Special Assessments, Reserve Contributions, Working Capital Contributions, fines and other charges as set forth herein. The Assessments, together with interest, late fees, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon each Lot. Assessments, together with interest, late fees, costs, fines and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot. The personal obligation for Assessments shall not pass to the Owner's successors in title unless expressly assumed in writing by such successor.

4.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used for, among other things: (i) the upkeep, maintenance and repair of the Common Area; (ii) promoting the health, safety and welfare of the Owners and Residents of Lots within the Project; (iii) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents; (iv) any upkeep, maintenance or repair of Property required by any governmental authority; (v) the common good and benefit of the

Property, Owners and Residents; and (vi) to pay the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to the Reserve Fund determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using its Lot or the Common Area, or by leasing or otherwise transferring occupancy rights with respect to its Lot. Further, no diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or the Board to take some action or perform some function under the Project Documents, or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

4.3 Annual Assessments. Annual Assessments shall provide for, as necessary, payment of the Common Expenses, a reasonable amount for Reserve Funds and for payment of taxes, insurance, maintenance, repairs and replacement of the Common Area.

4.3.1 Preparation of Budget. At least sixty (60) days prior to the end of each fiscal year of the Association, commencing with the first fiscal year following the conveyance of a Lot to a Purchaser, the Board shall adopt a budget for the Association that contains an estimate of the total amount of funds the Board believes will be required during the ensuing fiscal year to pay all Common Expenses and any allocation to Reserve Funds that the Board determines is necessary. At least thirty (30) days prior to the end of each fiscal year of the Association, commencing with the first fiscal year following the conveyance of a Lot to a Purchaser, the Board shall send to each Owner a summary of the budget, a statement of the amount of the Annual Assessments owed by each Owner, and the fractional payment cycle for the Annual Assessments. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of the fiscal year, then until and unless a budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect.

4.3.2 Initial Annual Assessments. Initial Annual Assessments shall be established by the Declarant and shall not be less than Three Hundred Dollars (\$300.00) per year and shall be prorated through the date of the close of escrow for each Lot sold to an Owner other than Declarant based on the number of full and partial months remaining in the relevant billing cycle.

4.3.3 Maximum Increase in Annual Assessments. Except as to the initial Annual Assessments, the Annual Assessments may not be increased by more than twenty percent (20%) above the Annual Assessments for the previous year without the vote or written consent of Owners representing a majority of the Lots. In the event the budgeted Annual Assessments for any fiscal year are insufficient to meet the actual or estimated Common Expenses for said year, the Board may, if in its reasonable discretion circumstances so warrant, levy supplemental Annual Assessments during the same fiscal

year so long as the total of the Annual Assessments levied during the fiscal year have not exceeded the prior fiscal year's Annual Assessments by more than twenty percent (20%).

4.3.4 Due Dates. Assessments shall be due and payable within fifteen (15) days of assessment thereof. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

4.4 Reserve Funds and Reserve Studies. All Reserve Funds collected by the Association shall be deposited into one (1) or more Reserve Accounts. Reserves may be funded from Assessments, the Reserve Contribution pursuant to Section 4.5 or any other revenue of the Association. The Board shall periodically, but no greater than once every ten (10) years, obtain a reserve study to assist the Board in determining an appropriate amount for Reserves for the Association; provided, however, (i) no such reserve study shall be required until at least three (3) years have elapsed following the date Assessments begin to accrue; and (ii) the results of any such reserve study shall be advisory only and the Board shall have the right to provide for Reserves which are greater or less than those shown in the reserve study; and (iii) in establishing Reserve Funds for the Association, in addition to the recommendations of any such reserve study and other relevant factors, the Board may take into account (i) the amount of Annual Assessments for the Property as compared to other comparable developments; (ii) the past occurrences of required repairs at the Property; and (iii) projected funds available to the Association pursuant to the Working Capital Contribution and Reserve Contribution paid pursuant to this Declaration.

4.5 Declarant's Exemptions. During the Declarant Control Period and notwithstanding anything to the contrary contained herein, Declarant shall not be required to pay any Assessments for any Lot owned by Declarant, regardless of whether developed or undeveloped, but instead may pay the operating deficiencies of the Association as set forth in Section 4.6 below. Upon the termination of the Declarant Control Period and notwithstanding anything to the contrary contained herein, Declarant shall not be required to pay any Assessments for any Lot owned by Declarant, regardless of whether developed or undeveloped. If a Lot owned by Declarant ceases to qualify for the exemptions granted herein, the Purchaser of the Lot shall pay a prorated share of the Assessments for the year in which the purchase occurs, and Declarant shall pay a prorated share of the operating deficiencies or Assessments, whichever is applicable. Declarant's obligation to pay operating deficiencies pursuant to Section 4.6 below shall terminate upon the termination of the Declarant Control Period. This Section 4.5 may not be amended during or anytime after the Declarant Control Period without the written consent of the Declarant.

4.6 Obligation for Deficiencies. During the Declarant Control Period, Declarant and shall pay or contribute to the Association cash as may be necessary to make up any

budget shortfalls, which contribution shall be based upon the number of Lots owned by Declarant as of the end of the period for which the deficiency has been calculated, which period shall be determined by the Board in its sole discretion (the "Deficiency Assessments"). Declarant may at any time in its sole discretion elect to cease paying the Deficiency Assessment, if any, and to pay instead the full Annual Assessment. Amounts paid directly by Declarant to the Association's creditors, or assets purchased by Declarant for the Association, or amounts paid for services rendered by Declarant or any of its affiliates for the benefit of the Association that otherwise would have been an expense of the Association, shall apply against the obligations of Declarant to pay all or a portion of its Deficiency Assessment. Any Deficiency Assessment to be paid by Declarant under this Section 4.6 may be in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed.

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

4.8 Reserve Contribution. Each Purchaser of a Lot, as well as each Designated Builder, shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution to the Association's Reserve Funds. The amount of the initial Reserve Contribution shall be set by the Board prior to the conveyance of the first Lot to a Purchaser or a Designated Builder. The Board may from time to time thereafter increase or decrease the amount of the Reserve Contribution. All amounts paid pursuant to this Section shall be paid by the Association into the Reserve Account to fund future major repair and replacements of the Common Areas and other areas for which the Association is responsible. Nothing in this Section 4.8 shall be construed as prohibiting or mandating the Association to make additional payments into Reserve Accounts from other Association funds. The Reserve Contributions shall be in addition to and shall not be offset against or considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The Board shall have broad discretion in the establishment of the Reserve Contribution and may suspend or reestablish such Reserve Contribution at any time and for any period.

4.9 Resale Assessment. In conjunction with the Association's obligations under Arizona law to provide certain documents and disclosures in relation to the sale of a Lot, each Purchaser of a Lot shall pay to the Association, immediately upon becoming an Owner of the Lot, a Resale Assessment in the maximum amount of \$400.00, or such greater amount as may be permitted by applicable law from time to time. The Resale Assessment shall be in addition to and shall not be offset against or considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The Board shall have broad discretion in the establishment of the Resale

Assessment and may suspend or reestablish the Resale Assessment at any time and for any period. This Resale Assessment shall not apply to the purchase of a Lot by a Designated Builder from Declarant, or by a Person who purchases a Lot from Declarant or a Designated Builder.

4.10 Working Capital Contribution. Each Purchaser of a Lot, as well as each Designated Builder, shall pay to the Association, immediately upon becoming the Owner of the Lot, a Working Capital Contribution. The amount of the Working Capital Contribution shall be set by the Board prior to the conveyance of the first Lot to a Purchaser or a Designated Builder. The Board may from time to time thereafter increase or decrease the amount of the Working Capital Contribution. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purposes permitted under the Project Documents. The Working Capital Contribution shall be in addition to and shall not be offset against or considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The Board shall have broad discretion in the establishment of the Working Capital Contribution and may suspend or reestablish the Working Capital Contribution at any time and for any period.

4.11 Benefitted Assessments. The Board may levy Benefitted Assessments against a particular Lot or Lots for expenses incurred or to be incurred by the Association as follows:

4.11.1 To cover the costs of maintenance of easements and property, including Common Area, that benefit certain Lots but not all of the Property; and

4.11.2 To cover the costs, including overhead and administrative costs, of providing benefits, items or service to the Lots, group of Lots, or Residents thereof, upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, caretaker service, or similar activities), which Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner or Resident.

4.11.3 For any other purpose set forth elsewhere in this Declaration.

4.12 Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any fiscal year, Special Assessments applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Areas, including fixtures and personal property related thereto, or for any other lawful Association purpose.

4.13 Effect of Nonpayment of Assessments; Remedies. The Association shall have a lien on each Lot for Assessments levied against the Lot and any other amounts payable to the Association pursuant to the Project Documents (the "Assessment Lien"). Such Assessment Lien shall be prior and superior to all other liens affecting the Lot in question,

except taxes, bonds, assessments and other levies, which by law are superior thereto, and the lien or charge of any First Mortgage or First Deed of Trust made in good faith and for value. The Assessment Lien may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the Assessment Lien as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Assessment Lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period the Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot, provided, however that the Association's acquisition and ownership of a Lot shall not be deemed to convert the same into Common Area. Recording of this Declaration constitutes record notice and perfection of the Assessment Liens established hereby, and recordation of any claim of an Assessment Lien shall not be required. The Board may invoke any or all of the remedies provided for in this Declaration, or any other reasonable remedies, to compel payment of any Assessment or installment thereof, or any other amount payable to the Association under the Project Documents, which is not paid when due (a "Delinquent Amount"). Such remedies include, but are not limited to, the following:

4.13.1 **Interest and Late Fees.** In the event any Assessment or installment thereof is not paid by the due date, the Board may impose a late fee in the amount of fifteen dollars (\$15.00) or ten percent (10%) of the unpaid Assessment, whichever is greater, or such greater amount as may be permitted under applicable Arizona law in the future, as well as interest in such amount as the Board determines is appropriate from time to time;

4.13.2 **Suspension of Rights.** The Board may suspend, for the entire period during which a Delinquent Amount remains unpaid, the obligated Owner's voting rights, rights to use and enjoy the Common Area and other Membership rights as provided herein;

4.13.3 **Collection of Delinquent Amount.** The Board may institute an action at law for a money judgment or any other proceeding to recover the Delinquent Amount to the fullest extent permitted by law;

4.13.4 **Recording of Notice.** The Board may record a notice of Assessment Lien; and

4.13.5 **Foreclosure of Lien.** The Board may foreclose the Assessment Lien against the Lot in accordance with the prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency).

It shall be the duty of every Owner to pay all Assessments and any other amount payable with respect to the Owner's Lot in the manner provided herein. Such Assessments and

other amounts, together with interest, late fees, attorneys' fees, and costs of collection as provided in this Declaration, shall, until paid, be a charge and continuing servitude and lien upon the Lot against which such Assessments and other amounts are made; provided, however, that such lien shall be subordinate to only those matters identified in this Declaration. The Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided for in this Declaration or otherwise available at law or in equity for the collection of all unpaid Assessments or other amounts payable to the Association, interest thereon, costs of collection thereof and reasonable collection agency fees and attorneys' fees. Notwithstanding anything herein to the contrary, the Association shall be entitled to maintain suit to recover a money judgment for unpaid Assessments and other amounts payable to the Association without a foreclosure of the lien for such Assessments, and the same shall not constitute a waiver of the lien for such Assessments or such other amounts payable to the Association.

4.14 No Offsets. All Assessments shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in Project Documents.

ARTICLE V

PERMITTED USES AND RESTRICTIONS

5.1 Covenants, Conditions, Restrictions and Easements Applicable to the Property. The covenants, conditions, restrictions and easements contained in this Article V shall apply to all portions of the Property (unless otherwise specifically indicated) and the Owners thereof.

5.2 Restrictions on Further Property Restrictions. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Resident, occupant or other Person against any Lot without the provisions thereof having been first approved in writing by the Board and, during the Declarant Control Period, Declarant. Any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void.

5.3 Health, Safety and Welfare. Uses of or activities or facilities on any Lot or the Common Area that, as determined by the Board in its sole discretion, may pose a risk to or adversely affect the health, safety or welfare of Owners, Residents or other Persons, are strictly prohibited.

5.4 Residential Use. All Lots and Residences within the Project shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any Lot. No trade or business may be conducted on any Lot, except that an Owner or Resident may conduct a business activity within a Residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell

from outside the Residence; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve Persons coming on to the Lot for purposes other than U.S. Mail or normal, infrequent parcel delivery; (iv) the business activity does not involve the door-to-door solicitation of Owners or other Residents in the Project; (v) the business activity does not violate any provision of the Project Documents; and (vi) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Owners, Residents or other Persons in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended to or does generate a profit or (iii) a license is required for such activity. The leasing of an entire Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

5.5 Animals. No animals, birds, fowl, poultry or livestock, other than two (2) generally recognized house pets weighing no more than forty (40) pounds each at the age of each animal's maturity, shall be maintained on any Lot or in any Residence, and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No pet 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 pet shall be maintained so as to be Visible From Neighboring Property. The Board may determine, in its sole and absolute discretion, whether for the purposes of this Section, a particular animal is a generally recognized house pet or a nuisance. Any decision rendered by the Board shall be enforceable to the same extent as other restrictions contained in this Declaration. The Board may adopt such rules and regulations relating to pets permitted and maintained on the Property. No Owner or Resident, or the foregoing's guests or invitees shall permit any pet to relieve itself on another Owner's Lot. It shall be the responsibility of an Owner to immediately remove any droppings from any pet. No pet shall be permitted to run at large, and each pet shall be confined entirely to an Owner's Lot except that a pet shall be permitted to leave an Owner's Lot or the fenced area on an Owner's Lot if such pet is at all times kept on a leash not to exceed six (6) feet in length and is under the direct control of the pet owner.

5.6 Antennas. No antenna, aerial, satellite dish or other device for the transmission or reception of television or radio (including amateur or ham radio) signals of any kind (collectively referred to as "Antennas") will be allowed outside any Residence, except that a device covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed or recodified from time to time will be permitted. Any such device shall comply with the applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be Visible From Neighboring Property. The Board is hereby vested with the broadest discretion to enact rules and

regulations to implement this Section 5.6 to conform to the law. The Board may enact rules and regulations that are more restrictive than this Section 5.6, if permissible by federal and state law.

5.7 Utility and Drainage Easements. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, unless otherwise approved by the Architectural Committee. No structure, landscaping or other Improvement that may change the direction of flow of drainage or that may damage or interfere with the installation and maintenance of utilities shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement, drainage easement, waterline easement or other similar easement. Such easement areas, and all Improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless such easement area is maintained by the Association, the utility company or a county, municipality or other public authority.

5.8 Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary building or structure of any kind shall be used at any time as a Residence on any Lot, either temporary or permanent. Except for temporary buildings, trailers or other structures used by the Declarant or a Designated Builder or approved in writing by the Architectural Committee, temporary buildings, trailers or other structures used during the construction or modification of Improvements approved by the Architectural Committee shall be removed immediately after the completion of such construction or modification, and in no event shall any such buildings, trailers or other structures be maintained or kept on any Property for a period in excess of twelve (12) months without the prior written approval of the Architectural Committee.

5.9 Parking, Storage, Streets and Passageways. The Property will have two parking and storage structures and a number of on street parking spaces. The Declarant or the Board will allocate to certain Lots the use of at least one parking structure space, which includes one storage space immediately adjacent thereto, at the time such Lot is purchased by an Owner other than the Declarant or a Designated Builder. Such allocation shall be in writing and shall be recorded against the Lot to which the parking structure space and storage space are allocated. Lots 100, 106, 107, 108, 109 and 121 will not be allocated a parking structure space. The Residences on these Lots will include attached garages. The parking structure spaces and storage spaces shall remain a part of the Association's Common Areas notwithstanding any recorded allocation or reallocation to an Owner. The Declarant or the Board may reallocate parking structure spaces and storage spaces between and among Owners provided the Owners subject to the reallocation consent to the reallocation in writing. Any such reallocations shall be recorded against the Lots to which the parking structure spaces and storage spaces are reallocated. No storage space shall be allocated or reallocated separate from the parking structure space to which the storage space is immediately adjacent. Lots 101, 102, 103, 104, 105, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125, and

126 shall have one parking structure space and one storage space allocated to each of said Lots. No reallocation will be permitted that deprives any of these Lots of at least one parking structure space or one storage space.

5.9.1 Except when entering and exiting the parking structure spaces and storage spaces, doors to the parking structure spaces and storage spaces must be kept closed, both to present an attractive appearance to the Property, and, during cold weather, to prevent water pipes from freezing.

5.9.2 No exterior alterations may be made to the parking structures and storage spaces, except by the Association from time to time.

5.9.3 Interior alterations may be made to the parking structure spaces and storage spaces including, but not limited to, the installation of shelving, with the prior written approval of the Architectural Committee.

5.9.4 Owners and Residents must first park in the parking structure space allocated to the Owner's Lot, any parking structure spaces leased or rented to the Owner by another Owner, or in the garage constructed on the Owner's Lot. Owners and Residents may only park in the on street parking spaces if another Permitted Vehicle is parked in the parking structure space allocated to the Owner's Lot, any parking structure spaces leased or rented to the Owner by another Owner, or in the garage constructed on the Owner's Lot. The Board is expressly authorized to adopt and amend rules and regulations governing parking in the community including, but not limited to, restricting parking in the on street parking spaces to guests only and adopting restrictions on the length of time an Owner or Resident may park in the on street parking spaces.

5.9.5 Owners may lease or rent their allocated parking structure spaces to other Owners.

5.9.6 Owners may not lease or rent their allocated parking structure spaces to non-Owners, which includes, but is not limited to, non-Owner Residents or tenants.

5.9.7 Parking in the parking structure spaces is restricted to Permitted Vehicles. "Permitted Vehicles" are defined as passenger motor vehicles classed by manufacturer rating as two and a half (2.5) tons or less, recreational motor or off-road vehicles that fit within the boundaries of a parking structure space, motorcycles, and electric golf carts. Parking in the on street parking spaces is restricted to the following Permitted Vehicles: passenger motor vehicles classed by manufacturer rating as two and a half (2.5) tons or less provided that the passenger vehicle fits completely within the on street parking space, and commercial vehicles parked only as long as reasonably necessary to provide commercial services requested by an Owner or Resident and provided the commercial vehicle fits completely within the on street parking space. Permitted Vehicles that are not in operating condition shall not be parked in parking structure spaces, on street parking spaces or storage spaces. For purposes of this Section 5.9.7, a Permitted Vehicle is not in operating condition if it is not running, has a

flat or missing tire for five (5) or more days, or is not properly licensed or registered. Permitted Vehicles do not include motor vehicles classed by manufacturer rating as exceeding two and a half (2.5) tons, mobile homes, mini-motor homes, travel trailers, recreational vehicles other than recreational motor or off-road vehicles that fit within the boundaries of a parking structure space, tent trailers, trailers, camper shells, detached campers, boats, boat trailers or other similar equipment or vehicles.

5.9.8 Parking structure spaces and garages constructed on certain Lots may only be used for the parking of Permitted Vehicles and may not be used for the storage of items that would prohibit the parking structure space's or garage's use as a parking space for a Permitted Vehicle. Parking structure spaces and garages may be used for limited storage of items provided such use does not prohibit the Owner or Resident from also parking a Permitted Vehicle in the parking structure space or garage.

5.9.9 No Permitted Vehicle or any other vehicle may be constructed, reconstructed, repaired or maintained on any part of the Property or within any parking structure space or garage. The foregoing includes, but is not limited to, routine maintenance such as oil changes, filter replacements, brake pad replacements and car washing.

5.9.10 Permitted Vehicle engines must not be left running while in the parking structure spaces, on street parking spaces, or garages.

5.9.11 Storage of gasoline or any other flammable materials is not permitted in parking structure spaces, garages, or storage spaces, nor is storage of explosives, ammunition, guns or any other item that is potentially harmful or hazardous.

5.9.12 Parking on the streets, interior paths, fire lanes or other passageways is strictly prohibited except as set forth elsewhere herein.

Any vehicle parked in violation of this Section 5.9 shall be considered a violation of this Declaration and shall be subject to towing at the sole cost and expense of the vehicle owner.

The provisions of this Section 5.9 shall not apply to vehicles of the Declarant, any Designated Builder or their respective employees, agents, affiliates, contractors or subcontractors, nor shall the provisions of this Section 5.9 apply to vehicles required by applicable law to be available to an Owner or Resident on the basis of such Owner's or Resident's employment.

5.10 **Interior Paths and Lot Parking.** Interior paths, which are identified as "Golf Cart Paths" and "Fire Lanes" on the Plat, shall not be used for vehicle traffic, with the exception of emergency vehicles, vehicles hired to tow other vehicles parked in violation of this Declaration, and the following Permitted Vehicles: electric golf carts that are no greater than four feet (4') in width, eight feet (8') in length and six feet (6') in height. No vehicle may be parked on the interior paths at any time, with the exception of emergency vehicles

and vehicles hired to tow other vehicles parked in violation of this Declaration. No vehicle may be parked on any Lot at any time, with the exception of one electric golf cart that is permitted by this Section 5.10 to travel on the interior paths, and which is parked in an enclosed structure built on a Lot. Any vehicle parked in violation of this Section 5.10 shall be considered a violation of this Declaration and shall be subject to towing at the sole cost and expense of the vehicle owner.

5.11 Nuisances. No nuisance 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 or which shall in any way interfere with the quiet enjoyment of each of the Owners and Residents of their respective Lots and Residences. Without limiting the generality of the forgoing provisions, no horns, whistles, bells or other sound devices, except fire detection and security devices used exclusively for such purposes, shall be located, used or placed on the exterior of any Residence. No loud, noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or Property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners and Residents. The Board shall have the right to determine, in its sole discretion, what constitutes a nuisance pursuant to this Section 5.11.

5.12 Trash and Community Dumpsters. No garbage, rubbish or trash, including bulk items, shall be placed or kept on any Lot except in covered containers. In no event shall such containers be stored or maintained so as to be Visible From Neighboring Property. The Association shall provide community dumpsters within which Owners and Residents may deposit their garbage, rubbish or trash. All garbage, rubbish or trash placed in the community dumpsters must be contained in durable plastic bags and secured tightly. No paints, liquids or combustible materials may be placed in the community dumpsters. No bulk items such as furniture, appliances, construction materials or any other items the Board, in its sole discretion, may consider to be "bulk," may be placed in the community dumpsters.

5.13 Screening and Fencing. All clotheslines, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot, except in an enclosed rear yard and provided they are not Visible From Neighboring Property. Machinery or equipment may be Visible from Neighboring Property when used in connection with the usual and customary use, maintenance or repair of a Residence, appurtenant structures or other Improvements.

5.14 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, golf cart path, passageway or other adjacent area (including, without limitation, Common Areas and adjacent Lots) from ground level to a height of eight (8) feet. The Common Area and all Lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent Lots and Common Area as constructed by the Declarant or any Designated Builder or as reconstructed or repaired in accordance with the original

plans and specifications or as a result of repair, shifting, settlement or movement of any such structure.

5.15 Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot or an undivided interest in all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant.

5.16 Signs. No signs whatsoever which are Visible From Neighboring Property shall be erected or maintained on any Lot or any part of the Property except for (i) signs required by legal proceedings and signs that must be permitted by law; (ii) no more than one (1) identification sign for each individual Residence with a face area of seventy-two square inches (72") or less; (iii) signs and notices erected or posted in connection with the provision of building security with a face area of seventy-two square inches (72") or less; (iv) promotional and advertising signs of Declarant on any Lot; and (v) such other signs (including, but not limited to, construction job identification signs, builder identification signs and subdivision identification signs) which are in conformance with the applicable requirements of all applicable governmental agencies and which are permitted by Declarant during the Declarant Control Period or, thereafter, have been approved in advance and in writing by the Architectural Committee as to size, color, design, message content and location. In addition, Declarant shall have the right and authority to permit and authorize any Designated Builder to construct and install temporary signage necessary or convenient for the development and sale of any Lots within the Property.

5.17 Mineral Exploration. 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, earth or any earth substance of any kind, and no derrick or other equipment designed or intended for any such activity shall be erected, placed, constructed or maintained on any Lot.

5.18 Diseases and Insects. No Owner shall permit any thing or any condition to exist upon any Lot or any part of the Property that could induce, breed or harbor infectious plant diseases, pests or noxious insects.

5.19 Common Walls. Common walls are walls or fences separating the yards between two (2) Lots or one (1) or more Lots and a portion of the Common Area, which do not constitute a portion of a Residence. The rights and duties of Owners of Lots with respect to common walls shall be as follows:

5.19.1 The Owners of contiguous Lots who have a common wall shall both equally have the right to use such wall provided that such use by the Owner does not interfere with the use and enjoyment of same by the other Owner;

5.19.2 In the event any common wall is damaged or destroyed through the act of an Owner, its Residents, tenants, agents, guests or invites or through the Owner's landscaping or irrigation systems located on the Owner's Lot (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to promptly

rebuild and repair the common wall without cost to the other Owner or Owners, and such Owner shall rebuild and repair the common wall such that it matches all adjacent walls in look, finish and color;

5.19.3 In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, its Residents, tenants, agents, guests or invites, or through the Owner's landscaping or irrigation systems located on the Owner's Lot (including deterioration from ordinary wear and tear and lapse of time) then, in such event, both adjoining Owners shall promptly proceed to rebuild or repair the common wall to as good a condition as formerly at their joint and equal expense;

5.19.4 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;

5.19.5 In the event any common wall located between Lots and a portion of the Common Area is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by the act of an adjoining Owner, its Residents, tenants, agents, guests or invites, or through the Owner's landscaping or irrigation systems located on the Owner's Lot, the Association shall be responsible for all maintenance thereof, including the painting of all portions of any fencing, except that the Owner of the Lot shall be responsible for maintaining and painting the surface of the common wall facing his Lot. The Association shall charge the Owner of the Lot an Assessment equal to one-half of the cost of any such maintenance, including structural repairs or replacements, to the common wall bordering the Owner's Lot;

5.19.6 Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall without the prior written consent of the Association and all Owners of any interest therein whether by way of easement or in fee; and

5.19.7 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall, shall first obtain the written consent of the adjoining Owners.

In the event any common wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots that share such common wall or in favor of the Association to the extent the common wall encroaches upon a Lot.

5.20 **Outdoor Burning.** There shall be no outdoor burning of trash or other debris; provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills, or typical residential outdoor fireplaces, so long as activities take place only in a rear yard.

5.21 **Fuel Tanks.** No fuel tanks of any kind shall be erected, placed or maintained on the Property except for propane or similar fuel tanks permitted under local ordinances or statutes and approved by the Architectural Committee.

5.22 **HVAC and Solar Panels.** Except as initially installed by the Declarant or any Designated Builder, no heating, air conditioning, evaporative cooling unit or solar panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee. Solar panels, while they may be permitted, must be submitted to the Architectural Committee for review and approval prior to installation. Subject to the restrictions of applicable law, the Architectural Committee may adopt rules and regulations regarding the placement of solar energy devices in order to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a Person six feet (6') tall standing at ground level on adjacent properties.

5.23 **Solar Power.** The Declarant may, but is not obligated to, supply separately metered solar power for each Lot. In the event the Declarant elects to pursue this option, the solar power will be provided by Verde River Estates, LLC ("Verde River"), or another similar utility provider as may exist from time to time, and billed by Verde River to each Lot Owner as a utility. Further, Verde River will have the right to lease one parking structure space and adjacent storage space at no cost, as well as have the right to install solar panels and related equipment on the roofs of both parking and storage structures, if necessary, as well as on any other portion of the Common Areas to facilitate the provision of solar power for each Lot within the Property. The Declarant or the Board has the right, without a vote of the Membership, to enter into and amend agreements with Verde River for purposes of this Section 5.23.

5.24 **Leasing Restrictions.** For purposes of this Section 5.24, a lease is defined as any occupancy of a Residence (whether or not money is exchanged) by anyone other than: (i) the Owner, (ii) the Owner's spouse, (iii) the Owner's or the Owner's spouse's children or parents, (iv) any individuals living with the Owner who are maintaining a common household with the Owner, or (v) guests of an Owner residing with the Owner of the Lot. No Owner may lease less than his entire Lot. Any lease must be in writing and be subject to the requirements of the Project Documents.

Lots 101, 102, 103, 104, 105, 110, 111 and 112 may be leased on a nightly basis. All other Lots are prohibited from lease on a nightly basis, and must be leased for a minimum term of thirty (30) consecutive days.

Each Owner who leases a Lot must provide the Association the following information at least fifteen (15) days prior to the effective date of the lease: (i) the first and last name of the tenant and each adult occupying the Residence during the lease term; (ii) contact information for the tenant and each adult occupying the Residence during the lease term; (iii) the time period of the lease, including the beginning and ending dates of the lease term; and (iv) a description and the license plate numbers of the tenants' Permitted Vehicles. The Association shall have the right to charge an administrative fee in connection with the Association's record keeping for each new tenancy.

Owners shall be responsible to ensure their tenants' compliance with the Project Documents and shall also be responsible for the acts of their tenants, including any violations of the Project Documents.

5.25 Landscaping. Initial landscaping on those portions of a Lot that is Visible from Neighboring Property (e.g. front yards and unfenced rear yards) shall be completed by the Lot Owner within ninety (90) days from completion of construction of a Residence on the Lot. No initial landscaping on a Lot that is Visible from Neighboring Property may be installed without the prior written approval of the Architectural Committee. In the event an Owner fails to complete such landscaping within this time period, the Declarant or Board may make a finding to such effect and give notice to the Owner that unless the landscaping is commenced within thirty (30) days from the date of the notice and thereafter diligently pursued to completion, the Association may cause such landscaping to be completed at the Owner's expense. If, at the expiration of the thirty (30) day period of time, such landscaping has not been commenced, the Declarant or the Board shall be authorized and empowered to cause such landscaping to be commenced and completed and the cost thereof shall be assessed to the Lot Owner as a Benefitted Assessment.

Each Owner shall keep all landscaping, including, but not limited to, all shrubs, trees, hedges, ground coverings and plantings of every kind located on its Lot, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material, and shall maintain the Lot in compliance with all applicable zoning ordinances.

5.26 Move-In and Move-Out. Moving into and out of the community is regulated by the Association and subject to the following restrictions, along with any rules and regulations the Board may adopt and amend from time to time.

5.26.1 All Resident move-ins and move-outs must be scheduled with the Association at least five (5) business days prior to the move-in or move-out date.

5.26.2 Owners shall pay the Association a deposit of \$150.00, or such other amount as the Board may determine from time to time, with each Resident move-in and with each Resident move-out. Such deposit must be received by the Association at least forty-eight (48) hours before a scheduled move-in or move-out. Up to \$100.00 of the deposit will be refunded to the Owner provided there is no damage to the Common Area or other portions of the Property as a result of the move-in or move-out.

5.26.3 Owners who fail to schedule any move-in or move-out for their Residence, or who fail to pay the deposit, will be assessed a fine in the amount of \$150.00, or such other amount as the Board may determine from time to time.

5.26.4 All move-ins and move-outs will be scheduled between the hours of 7:00 a.m. and 6:00 p.m. Any moves during prohibited times will result in a \$25.00 per hour fine, or such other amount as the Board may assess from time to time.

5.26.5 In addition to scheduling and coordinating move-ins and move-outs with the Association, all furniture deliveries, large appliance deliveries, and any large item delivery or other delivery that requires a large commercial vehicle that will not fit completely in an on street parking space must be scheduled and coordinated with the Association at least five (5) business days prior to the delivery. Further, any commercial or other services an Owner or Resident requests, which are provided by a vendor who needs immediately adjacent access to the Owner's or Resident's Lot, or whose vehicle will not fit completely in an on street parking space, must also be scheduled and coordinated with the Association at least five (5) business days in advance of the date of service. It is the responsibility of the Owner or Resident to instruct delivery persons, service providers, and vendors of the community's limited direct access to Lots, parking, scheduling, and coordination requirements. It is further the responsibility of the Owner or Resident to meet delivery persons, service providers, and vendors in the area designated by the Association in which the delivery persons, service providers, and vendors may park their vehicles.

5.26.6 All boxes and packing materials must be disposed of off Property by the Resident moving in or moving out of the Residence. Boxes and packing materials may not be disposed of in the community dumpsters.

The provisions of this Section 5.27 shall not apply to a tenant who leases Lot 101, 102, 103, 104, 105, 110, 111 or 112 on a nightly basis and whose move-in or move-out does not require the delivery or removal of personal property and household furnishings. The provisions of this Section 5.27 shall also not apply to a tenant who leases a Lot that is furnished by an Owner and whose move-in or move-out does not require the delivery or removal of personal property and household furnishings.

ARTICLE VI

EASEMENTS

6.1 **Utility Easements.** There hereby is created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities approved by the Declarant or the Board including, but not limited to, water, sewer, gas, telephone, electricity, solar and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain any necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility or service lines may be installed or relocated within the Property except as initially created or approved by the Declarant without the prior written approval of, in the case of a Common Area, the Association and the Architectural Committee or, in the case of a Lot, the Owner of such Lot and the Architectural Committee.

6.2 **Easements for Ingress and Egress.** Easements for ingress and egress are hereby reserved to the Declarant, the Owners, Residents, and the foregoing's tenants, guests and invitees for pedestrian traffic over, through and across sidewalks, interior paths, fire lanes and other passageways as the same may from time to time exist upon the Common Area, as depicted on the Plat, and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

6.3 **Association Right of Entry.** During reasonable hours, any member of the Architectural Committee, any member of the Board, or any authorized representative of the Association or Architectural Committee (including, without limitation, a managing agent) shall have the right to enter upon and inspect any Lot, excluding the interior of any Residence, for the purpose of making inspections to determine whether the provisions of the Project Documents are being complied with by the Owner of said Lot.

6.4 **Association's Easement for Performing Maintenance Responsibilities.** The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and for performing all of the Association's other rights, duties and obligations under the Project Documents.

6.5 **Drainage and Retention.** Each Lot shall be subject to an easement for the drainage and/or retention of water from other Lots, Common Area or other property in accordance with the drainage plans for the Property or for any Lot as shown on the Plat, on the drainage plans on file with the Town or as set forth in any other recorded document affecting the Property. Wherever drainage flows from one (1) Lot under or through one (1) or more other Lots or from the Common Area under or through one (1) or more Lots, said drainage flow shall not be impeded, diverted or otherwise changed. These easements shall include, but are not limited to, receiving the runoff from roofs and drainage under and through common walls. An Owner may not alter the finished grade of such Owner's Lot or otherwise alter the drainage on said Lot without the approval of the Architectural Committee and, to the extent required, the Town and Yavapai County.

6.6 **Mailbox Easements.** Declarant reserves unto itself and grants to the Association an easement for the purpose of access and maintenance upon, across, over and under the Property to the extent reasonably necessary to install, replace, repair and maintain United States mailboxes, including mailboxes serving multiple Owners or Lots, in such numbers and at such locations as may be deemed reasonable and appropriate by Declarant and the United States Postal Service. Any Owner or Resident served by such a mailbox, together with the United States Postal Service, shall have the right of reasonable access to and from such mailbox for the purpose of depositing and retrieving mail. Specific mailboxes or mailbox easement areas subject to this provision shall be designated by Declarant, and the Association shall be responsible for the maintenance, repair and replacement of any such mailboxes, the cost of which shall be included as a Common Expense of the Association and included in the budget therefor; provided, however, that each Owner shall be solely responsible for the lock and key associated with their mailbox.

6.7 Verde Ditch. The Verde Ditch runs throughout parts of the Property. The Verde Ditch is a non-profit municipal corporation recognized by the State of Arizona. There are inherent rights governed by "Rules and Regulations" promulgated by an Arizona Superior Court in 1989 that impose limitations on the construction of fences, buildings and other structures along the ditch. Broad directives were promulgated to govern and maintain the Verde Ditch and to insure adequate funding for operational costs. A Commissioner is appointed by the Court for each District of which the Verde Ditch runs. The Commissioner and its agents and/or employees, using appropriate equipment, shall have the right of usage at all times to work the areas adjacent to and on both sides of the ditch for the purposes of maintenance, repair and operation of the Verde Ditch. All Owners with Property abutting the Verde Ditch shall provide access and a right-of-use easement to the Verde Ditch in compliance with the "Rules and Regulations" as stipulated by the State of Arizona.

6.8 Owners' Easements of Enjoyment. Every Owner and Resident shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

6.8.1 The right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and facilities located thereon;

6.8.2 The right of the Association to suspend the rights of an Owner (and Residents of such Owner's Lot and their guests and invitees) to use the recreational facilities located on the Common Area for any period during which any Assessment against such Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Project Documents;

6.8.3 The right of the Association to dedicate or transfer (including, but not limited to, mortgage) all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners; provided, however, that (i) no such dedication or transfer (except utility easements) shall be effective unless evidenced by an instrument signed by Owners representing at least two-thirds (2/3) of the Lots, and (ii) all such dedications and transfers shall be subject to easements in favor of Owners for ingress and egress through the Common Area to their respective Lots;

6.8.4 The right of Declarant, and its agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to the non-exclusive use, without charge, of the Common Area for maintenance of sales and leasing facilities, and display, advertising, exhibit and such other purposes as are determined by Declarant in its sole and absolute discretion;

6.8.5 The right of the Association to change the use of the Common Areas in accordance with this Declaration;

6.8.6 The use of the parking and storage spaces, streets, interior paths, fire lanes, and other passage ways within the Property by Declarant, Designated Builders, and each of their affiliates and designees;

6.8.7 The right of the Association to change the size, shape or location of the Common Area, to exchange Common Area for other lands or interests therein which become Common Area and to abandon Common Area so long as, in each case, the change does not conflict with the Town's intended use of the Property and, either (i) the Board determines that the Owners are not materially or adversely affected, or (ii) Owners representing at least two-thirds (2/3) of the Lots have executed an instrument agreeing to such change in size, shape or location, exchange or abandonment.

6.9 **Lessees.** If an Owner leases its Lot, the lessee and members of such lessee's family residing with such lessee shall have the right to use the Common Area during the term of the lease. Furthermore, the Owner of such Lot that is being leased or rented shall not have the right to use the Common Area until the expiration or earlier termination of such lease.

6.10 **Guests and Invitees.** The Board shall have the right to regulate and limit the use of the Common Area by guests and invitees of Owners and Residents.

6.11 **Limitations.** An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement of enjoyment. No Owner shall be exempt from personal liability for Assessments, have the right to a release of such Owner's Lot from the liens or charges arising under this Declaration by waiver of the use and enjoyment of the Common Areas.

6.12 **Declarant Easements.** Declarant hereby reserves to itself, its duly authorized agents, employees, representatives, successors and assigns, including but not limited to any Designated Builder, a non-exclusive blanket easement over and through the Property for all purposes reasonably related to the development and completion of Improvements on the Property, and as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising the rights granted to or reserved by Declarant or to Designated Builders by this Declaration, including without limitation: (i) temporary construction easements; (ii) easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (iii) easements for the construction, installation and maintenance of Improvements on the Property or Improvements reasonably necessary to serve the Property.

Declarant further reserves to itself, its duly authorized agents, employees, representatives, successors and assigns including, but not limited to any Designated Builder, the right to: (i) use any Lots owned or leased by Declarant or a Designated

Builder, any other Lot with written consent of the Owner thereof, or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office parking areas; and (ii) install and maintain on the Common Area, any Lot owned or leased by Declarant or a Designated Builder, or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which Declarant deems necessary for the development, sale or lease of the Property. In the event of any conflict or inconsistency between the provisions of this Section 6.12 and any other provision of this Declaration, this Section 6.12 shall control.

6.13 Annexation of Other Property. Declarant may, but is not obligated to, annex real property into the Project in addition to the Property, and thereby subject such additional property to the plan of this Declaration, and to bind the owners of any interests therein to the covenants, conditions, restrictions, liens, assessments, privileges and rights contained in this Declaration, which owners will become members of the Association.

ARTICLE VII

MAINTENANCE

7.1 Maintenance of Common Areas by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and any landscaping located thereon, and may without any approval of the Owners do any of the following: (i) reconstruct, repair, replace or refinish any Improvement or portion thereof located on any of the Common Area; (ii) construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a parking or storage space, street, interior path, fire lane or other passageway; (iii) maintain, repair and replace the plants, trees and other landscaping Improvements situated on the Common Area; (iv) place and maintain upon any such Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof; (v) pay, before delinquent, ad valorem real property taxes assessed against the Common Area; and (vi) do all such other and further acts which the Board deems necessary or convenient to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration. The Board shall have the sole right to determine the appropriate level of maintenance, repairs or replacements required for the Common Area, as well as whether any changes to the Improvements located thereon may be required.

7.2 Damage or Destruction to the Common Area Caused by an Owner. In the event the need for maintenance, repair or replacement of any portion of the Common Area, including any landscaping located thereon, is caused by the willful or negligent act of an Owner or Resident of an Owner's Lot, or the foregoing's guests, invitees or pets, the Association shall cause the maintenance, repair or replacement to be performed, and the cost of any such maintenance, repair or replacement shall be assessed to the responsible Owner's Lot as a Benefitted Assessment.

7.3 **Maintenance of Lots by Owners.** Each Owner shall be solely responsible for the maintenance, repair and replacement of such Owner's Lot and the Residence and all Improvements located thereon, including the landscaping located thereon.

7.4 **Nonperformance by Owners.** If any Owner fails in its maintenance, repair and replacement obligations set forth in Section 7.3 hereinabove, the Association shall have the right, but not the obligation, after notice to the Owner in violation, to enter upon such Owner's Lot to perform the maintenance, repair and replacement not performed by the Owner, and the cost of any such maintenance, repair or replacement shall be assessed to the Owner's Lot as a Benefitted Assessment.

7.5 **Payment of Utility Charges.** Each Lot shall be separately metered for water, sewer, electrical, solar, and all other utilities and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer, electrical, solar and all other utilities to the Common Area shall be a Common Expense of the Association and shall be included in the budget of the Association.

ARTICLE VIII

INSURANCE

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

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

8.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of, or in connection with, the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a part;

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

8.1.4 Such other insurance as the Board may determine from time to time to be appropriate to protect the Association, members of the Board and Architectural Committee or the Owners;

8.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting outside the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; and (v) the Association shall be the named insured.

8.2 **Fidelity Bonds.** The Association may maintain blanket fidelity bonds as the Board deems appropriate or necessary for officers, directors, trustees and employees of the Association and any other Persons handling or responsible for funds of or administered by the Association, whether or not they receive compensation for their services. The total amount of any fidelity bond maintained by the Association shall be based upon the best business judgment of the Board.

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

8.4 **Payment of Deductible.** In the event any Owner tenders a claim under any insurance policy maintained by the Association pursuant to this Article VIII, the Board reserves the right to assess any deductible required to be paid to the Owner tendering the claim as a Benefitted Assessment.

8.5 **Insurance Obtained by Owners.** Each Owner shall be responsible for obtaining property insurance for such Owner's own benefit and expense covering such Owner's Lot and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of such Owner's Lot.

8.6 **Payment of Insurance Proceeds.** With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.7, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

8.7 **Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal or unauthorized under any state or local statute or ordinance, or (ii) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild or replace such Common Area; provided, however, that the Association should rebuild or replace such Common Area if required by law. The cost of repair or replacement in excess of insurance proceeds and Reserves shall be paid by the Association. If the entire portion of the damaged or destroyed Common Area is not repaired or replaced, insurance proceeds attributable to such portions shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

ARTICLE IX

GENERAL PROVISIONS

9.1 **Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Any owner found to be in violation of this Declaration shall be responsible for the costs of enforcement of this Declaration including reasonable attorneys' fees required to obtain compliance, and regardless of whether a lawsuit or other action has been commenced.

9.2 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

9.3 **Duration.** The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be extended automatically for successive periods often (10) years. This Declaration may be terminated at any time by the written approval or the affirmative vote of Owners representing not less than ninety percent (90%) of the Lots. Any termination of this Declaration shall be evidenced by a Declaration of Termination signed by the President or Vice President of the Association and recorded with the County Recorder of Yavapai County, Arizona. Thereupon, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. Notwithstanding anything herein to the contrary, no dissolution of this Declaration may take place without a successor entity in place to assume maintenance of the Common Areas, and during the Declarant Control Period, no Declaration of Termination may be so recorded without the prior written approval of Declarant.

9.4 **Amendment.**

9.4.1 **By Declarant.** Until termination of the Declarant Control Period, Declarant may amend this Declaration for any purpose, and without the consent or approval of any Owners or any other Person. In addition to the foregoing, after termination of the Declarant Control Period, and for so long as Declarant owns any portion of the Property, Declarant may of its own volition, and without the consent or approval of any Owners or any other Person, amend this Declaration for the following purposes: (i) to bring any provision hereof into compliance with applicable law; (ii) to satisfy the requirements of any governmental agency pertaining to lending criteria, or established as conditions for acceptability or approval of mortgages, mortgage insurance, loan guarantees or other factors; or (iii) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof. Any amendment during such time as Declarant owns any portion of the Property shall require the written approval of Declarant.

9.4.2 **By the Association.** Except as otherwise specifically provided in Section 9.4.1, this Declaration may be amended by the affirmative vote or written consent of Owners representing at least two-thirds (2/3) of the votes entitled to be cast, provided that no such amendment shall be valid without Declarant's written consent, so long as Declarant owns any portion of the Property. Notwithstanding the foregoing, the Board may, with the prior written consent of Declarant so long as Declarant owns any portion of the Property, amend this Declaration to conform this Declaration with applicable law and without obtaining the approval or consent of any Owner. A certificate of amendment, setting forth the full amendment adopted, duly signed and acknowledged by the President or Vice-President of the Association shall be recorded.

9.4.3 **Challenge to Amendment.** Any challenge to an amendment to this Declaration for reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Article must be made within one (1) year after the recording of the amendment.

9.5 **Violations and Nuisance.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by the Declarant, the Association or any Owner.

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

9.7 **Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

9.8 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed as follows: if to the Association or the Architectural Committee, to the current Association statutory agent which is on file with the Arizona Corporation Commission; if to the Declarant, to the current Declarant statutory agent which is on file with the Arizona Corporation Commission; if to an Owner, to the address of such Owner's Lot or to any other address last furnished by the Owner to the Association; provided, however, that any such address may be changed at any time by the party concerned by delivering a written notice of change of address to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association and shall promptly notify the Association in writing of any subsequent change of address. Notwithstanding the forgoing, plans, specifications and other documents shall not be deemed to have been submitted to the Architectural Committee unless actually received by the Architectural Committee.

9.9 Binding Effect. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, and such Person's heirs, personal representatives, successors, transferees and assigns, are hereby bound 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 thereby, acknowledges that this Declaration sets forth a general scheme for the development of the Property and hereby evidences an interest 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 various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenant and agree that the Lots, 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 only refer to the Lot.

9.10 Management Agreements. Any agreement for professional management of the Association or the Project or any other contract providing for services of the Declarant, or other developer, sponsor or builder of the Project shall not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee upon thirty (30) days advance written notice. Any professional management company shall have the authority to act as the agent of the Association in the enforcement of this Declaration pursuant to the terms and condition of the applicable professional management agreement.

9.11 Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to

make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

9.12 **Topic Headings.** The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or this Declaration.

9.13 **Survival of Liability.** The termination of Membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such Membership, or impair any rights or remedies which the Association may have against such former Member arising out of or in any way connected with such Membership and the covenants and obligations incident thereto.

9.14 **Interpretation.** In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the other Project Documents, the provisions of this Declaration shall prevail. The Board's interpretation of the Project Documents is final.

9.15 **Joint and Several Liability.** In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration shall be joint and several.

9.16 **Attorneys' Fees.** In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration, to collect any Assessments or other amounts due from an Owner, or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the Association shall be entitled to reimbursement of all of its attorneys' fees and costs from the Owner in violation, regardless of whether or not a lawsuit or other action has been filed.

9.17 **Declarant's Right to Use a Similar Name.** The Association hereby irrevocably consents to the use by any other non-profit corporation that may be formed or incorporated by Declarant of a corporate name that is the same or deceptively similar to the name of the Association provided one (1) or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name that is the same or deceptively similar to the name of the Association. Any officer of the Association, each acting alone without the other, is hereby authorized to execute on behalf of the Association such consents, approvals, confirmations, acknowledgments and other instruments as Declarant may request in order to evidence and confirm the rights and interests of Declarant in such name.

9.18 **Right to Replat.** Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of the Owners, to re-subdivide and re-plat any Lot or Lots that the Declarant then owns and has not sold.

9.19 **Indemnification.** THE OWNERS, AS DEFINED HEREIN, ACKNOWLEDGE THAT: (1) THE PROPERTY SUBJECT TO THIS DECLARATION CONTAINS COMMON AREAS; (2) THE COMMON AREAS POSSESS CERTAIN INHERENT DANGERS FROM WHICH THE OWNERS MUST TAKE PRECAUTIONS TO PROTECT THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS AND OTHERS; (3) NO SAFETY PERSONNEL WILL PATROL THE COMMON AREAS AND THE OWNERS ASSUME THE RISK AND THE RESPONSIBILITY OF PROTECTING THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS OR OTHERS; AND (4) THE OWNERS WILL INDEMNIFY, DEFEND AND HOLD HARMLESS DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, INJURIES, DAMAGES, EXPENSES AND COSTS, INCLUDING INTEREST AND ATTORNEYS' FEES, INCURRED BY OR CLAIMED AGAINST DECLARANT, THE ASSOCIATION AND THEIR SUCCESSORS AND ASSIGNS UNDER ANY LAWS ARISING IN ANY WAY FROM OR IN CONNECTION WITH THE COMMON AREAS. EVERY DIRECTOR, OFFICER AND AGENT OF THE ASSOCIATION (WHETHER OR NOT SUCH AGENCY RELATIONSHIP RESULTS FROM APPOINTMENT, ELECTION OR EMPLOYMENT) SHALL BE INDEMNIFIED BY THE ASSOCIATION (AND THE ASSOCIATION SHALL DEFEND AND HOLD HARMLESS SUCH PERSON(S)) AGAINST ALL EXPENSES AND LIABILITIES, INCLUDING ATTORNEYS' FEES, INCURRED BY OR IMPOSED UPON SUCH PERSON IN CONNECTION WITH ANY PROCEEDING TO WHICH SUCH PERSON MAY BE A PARTY, OR IN WHICH SUCH PERSON MAY BECOME INVOLVED, BY REASON OF SUCH PERSON BEING OR HAVING BEEN A DIRECTOR, OFFICER OR AGENT OF THE ASSOCIATION, OR ANY SETTLEMENT THEREOF, WHETHER OR NOT SUCH PERSON IS A DIRECTOR, OFFICER OR AGENT AT THE TIME SUCH EXPENSES ARE INCURRED, TO THE FULLEST EXTENT THAT SUCH INDEMNIFICATION IS SPECIFICALLY PROVIDED FOR BY A.R.S. § 10-3202(B) OR BY THE LAWS OF THE STATE OF ARIZONA THEN IN EFFECT. THE FOREGOING RIGHTS OF INDEMNIFICATION SHALL BE IN ADDITION TO AND NOT EXCLUSIVE OF ALL OTHER RIGHTS TO WHICH SUCH DIRECTORS, OFFICERS OR AGENTS MAY BE ENTITLED.

ARTICLE X

CLAIM AND DISPUTE RESOLUTION

The Association, the Board, and all Owners and Residents shall be bound by the following claim resolution procedures:

10.1 **Right to Cure Alleged Defect.** If a Person claims, contends, or alleges an Alleged Defect (such Person hereinafter referred to as "Claimant"), the party that constructed the Improvement with respect to which the Alleged Defect relates including, without limitation,

Declarant and/or a Designated Builder (such party hereinafter referred to as the "Developer") shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

10.1.1 Notice of Alleged Defect. If Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof, Claimant shall give written notice of the Alleged Defect to the Developer stating plainly and concisely: (i) the nature and location of the Alleged Defect; (ii) the date on which the Association or Owner giving the notice of Alleged Defect first became aware of the Alleged Defect; and (iii) whether the Alleged Defect has caused any damage to any Persons or Property (such notice referred to as "Notice of Alleged Defect"). If the Alleged Defect is alleged to be the result of an act or omission of a Person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes or any successor statutes (a "Licensed Professional"), then the Notice of Alleged Defect from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes, as amended from time to time.

10.1.2 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, any Lot or Residence, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Developer in its sole and absolute discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

10.2 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article 12 shall be construed to impose any obligation on a Developer to inspect, test, repair or replace any item or Alleged Defect for which such Developer is not otherwise obligated under applicable law. The right reserved to Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to a Developer except by a written document executed by such Developer and recorded.

10.3 Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to Section 10.4 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation or arbitration against a Developer alleging (i) damages for Alleged Defect costs, (ii) diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds

from a Developer (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's Reserve Account. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer which notice shall include at a minimum (i) a description of the Alleged Defect; (ii) a description of the attempts of the Developer to correct such Alleged Defect and the opportunities provided to the Developer to correct such Alleged Defect; (iii) a certification from a Licensed Professional that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such Licensed Professional; (iv) the estimated Alleged Defect costs; (v) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (vi) a description of the fee arrangement between such attorney and the Association; (vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Developer and the source of the funds which will be used to pay such fees and expenses; (viii) the estimated time necessary to conclude the action against the Developer; and (ix) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

10.4 Alternative Dispute Resolution. Except as to any claim brought by the Association against an Owner, Owners, or Person other than a Developer, any dispute or claim between or among: (i) a Developer (or its brokers, agents, consultants, contractors, subcontractors or employees) on the one hand, and any Owner(s) and/or the Association on the other hand or (ii) the Association on the one hand, and any Owner on the other hand, and regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to the design or construction of the Property and/or an Alleged Defect (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this Section 10.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

10.4.1 Negotiation. Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes the representatives efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such negotiation.

10.4.2 Mediation. If the parties cannot resolve their Dispute pursuant to the procedures described in Section 10.4.1 above within sixty (60) days of notice of the Dispute or such other time as may be agreed upon by such parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") shall have thirty (30) days after the Termination of Negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration

Association ("AAA") or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No Person shall serve as a mediator in any Dispute in which such Person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty (30) days after Termination of Negotiations, the Disputing Party shall be deemed to have fully and forever waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute, provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

(i) **Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a premediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in Yavapai County or such other place agreed to by the parties to the Dispute.

(ii) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in Section 10.4.2(v) below. The mediator does not have the authority to impose a settlement on any party to the Dispute.

(iii) **Exclusion Agreement.** Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) **Parties Permitted at Sessions.** Other than the parties' respective counsel and expert witnesses, Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

(v) **Expenses of Mediation.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear its/their own attorneys' fees and costs in connection with such mediation.

10.4.3 Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the procedures described in Section 10.4.2 above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to arbitration in accordance with the Commercial Arbitration Rules of the AAA (the "Commercial Arbitration Rules"), as modified or as otherwise provided in this Section 10.4.3. If the Disputing Party does not submit the Dispute to arbitration within thirty (30) days after termination of mediation proceedings, the Disputing Party shall be deemed to have fully and forever waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings. The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding; provided, however, that no Developer shall be required to participate in the arbitration proceeding if all parties against whom a Developer would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 10.4.3, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) **Place.** The arbitration proceedings shall be heard in Yavapai County or such other place as the parties to the Dispute may agree.

(ii) **Arbitration.** A single arbitrator shall be selected in accordance with the rules of the AAA from panels maintained by the Association with experience in relevant matters which are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the complaint (or such other notice of claims or document required by the AAA) on all defendants named therein.

(iii) **Commencement and Timing of Proceeding.** The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) **Pre-hearing Conferences.** The arbitrator may require one or more pre-hearing conferences.

(v) **Discovery.** The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters:

(a) witness lists; (b) expert witness designations; (c) expert witness reports; (d) exhibits; (e) reports of testing or inspections of the Property subject to the Dispute, including but not limited to, destructive or invasive testing; and (f) trial briefs. A Developer shall also be entitled to conduct further tests and inspections as provided in Section 10.1 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) **Limitation on Remedies/Prohibition on the Award of Punitive Damages.** Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

(vii) **Motions.** The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(viii) **Expenses of Arbitration.** Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

10.5 Approval of Arbitration or Litigation. The Association shall not deliver a Notice of Alleged Defect or commence any legal action or mediation, or arbitration proceeding or incur legal expenses in relation to an Alleged Defect without first obtaining the affirmative vote or written consent of Owners representing at least two-thirds (2/3) of the votes entitled to be cast.

10.6 Statutes of Limitations. Nothing in this Article 10 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that all statutes of limitations applicable to claims shall apply to the commencement of arbitration proceedings under Section 10.4. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the claim, the claim shall forever be barred.

10.7 Enforcement of Resolution. If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Section 10.4.1 or Section 10.4.2

above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if the parties accept an award of arbitration in accordance with Section 10.4.3 and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation or the award without the need to again comply with the procedures set forth in this Article 10. In such event, the party taking action to enforce the terms of the negotiation, mediation or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation or mediation or the award including, without limitation, attorneys' fees and court costs.

10.8 **Amendment of Article X.** Without the prior written consent of Declarant, this Article X may not be amended for a period of twenty (20) years following the recording of the Declaration.

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

DECLARANT

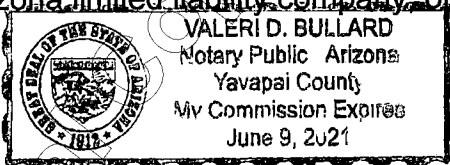
Wee Hollow, LLC
an Arizona Limited Liability Company

By: *David Meier*
David Meier

Its: Manager

STATE OF ARIZONA)
) ss
County of Yavapai)

The foregoing instrument was acknowledged before me this 22nd day of April 2021 by David Meier, as Manager of Wee Hollow, LLC, an Arizona limited liability company, on behalf of the company.



Valeri D. Bullard
Notary Public

My Commission Expires 6/9/21

EXHIBIT A

Legal Description of Project

A parcel of land located in the West half of Section 32, Township 14 North, Range 5 East of the Gila and Salt River Meridian, Yavapai County, Arizona, more particularly described as follows:

Commencing at a found aluminum capped iron bar stamped "Dale Stone LS 12218" in hand hole partially illegible at the West quarter corner of said Section 32, thence S 89°45'00" E along the midsection line of said Section 32, (S 89°45'00" E record per Book 655 page 548 in the records of Yavapai County Recorder's Office and the Basis of Bearings for this description) for a distance of 800.63 feet to a found ½" rebar with cap stamped "LS 26925 found and accepted", and **THE TRUE POINT OF BEGINNING:**

Thence N16°45'00" W for a distance of 209.40 feet to a found ½" rebar with plastic cap (stamped but illegible);

Thence N 46°40'30" E for a distance of 71.41 feet to a found ½" rebar with cap stamped "LS 26925";

Thence S 86°40'16" E for a distance of 455.62 feet to a found ½" rebar with cap stamped "LS 26925 found and accepted";

Thence S 31°41'45" W for a distance of 110.22 feet to a found ½" rebar with cap stamped "LS 26925 found and accepted";

Thence S 53°07'22" W for a distance of 216.34 feet to a found ½" rebar with cap stamped "LS 26925 found and accepted", from which a found 1.25-inch pipe with no I.D. at the locally accepted position of the center of Section 32, lies S 89°52'33" E a distance of 1624.70 feet;

Thence S 33°01'07" W for a distance of 42.81 feet to a found ½" rebar with no I.D.;

Thence S 33°26'26" W for a distance of 35.07 feet to a found ½" rebar with cap stamped "LS 12218" at the northeasterly corner of that certain parcel of land described in a Warranty Deed document number 2016-0040890, recorded in the Yavapai County Recorder's Office Yavapai County Arizona;

Thence N 89°50'05" W along the North line of said parcel described in document number 2016-0040890 WD, for a distance of 173.09 feet to a found ½" rebar with cap (stamped but illegible)

Thence S 00°13'30" W along the West line of said parcel described in document number 2016-0040890 WD, for a distance of 34.31 feet to the Southeast corner of Parcel II Exhibit "A" as described in document number 2019-0003487 WD recorded in the Yavapai County Recorder's Office;

Thence N 89°46'30" W along the south line of said parcel of land described in document number 2019-0003487 WD for a distance of 13.27 feet to a found ½" rebar with no I.D. at the Southeast corner of Lot 2 Block 12 Plat of Camp Verde Townsite recorded in Book 2, of Plats Page 62, Yavapai County Recorder's Office;

Thence N 89°44'56" W along the South line of said Lot 2 for a distance of 141.32 feet to a found ½" rebar with no I.D.;

Thence N 19°03'26" W for a distance of 78.75 feet to the Northwest corner of Lot 1, of said Plat of Camp Verde Townsite;

Thence S 89°46'59" E along the North line of said Lot 1, for a distance of 167.32 feet to the Northeast corner of said Lot 1;

Thence S 89°46'30" E along the North line of said Parcel II, described in 2019-0003487 WD for a distance of 13.27 feet;

Thence N 00°13'30" E for a distance of 25.10 feet to **THE TRUE POINT OF BEGINNING.**

Parcel contains 2.6855 acres more or less.