

**AMENDED & RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
COR D'AMOR SUBDIVISION**

This Amended & Restated Declaration of Covenants, Conditions, Restrictions and Easements for Cor D'Amor subdivision (the "**Declaration**"), amends and restates in its entirety the original Declaration of Covenants, Conditions, Restrictions and Easements originally recorded in Book 4395, Page 535 of the Official Records of Yavapai County, Arizona, and is made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Sedona Stars, LLC, an Arizona limited liability company (the "**Declarant**").

**RECITALS**

A. As of the date hereof, Declarant is the owner of fee title to the real property located in Yavapai County, Arizona, legally described on Exhibit A attached hereto (the "**Property**").

B. By executing and Recording this Declaration with the County Recorder of Yavapai County, Arizona, the Declarant intends to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners (defined below) of Lots (defined below). Declarant desires to provide a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, that are for the purpose of protecting the value and desirability of and that shall run with the Property now and hereafter subjected to this Declaration and that shall be binding on all parties having any right, title or interest in said Property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner of all or any part thereof.

**ARTICLE 1**

**DEFINITIONS**

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

**1.1** "**Assessments**" means any assessments or other amounts levied against the Lots pursuant to Article 8 of this Declaration.

**1.2** "**Architectural Review Committee**" means the committee of the Association to be created pursuant to Section 3.1 of this Declaration.

**1.3** "**Architectural Design Guidelines**" (Herein after to be referred to as the Guidelines) means the rules, guidelines, standards and procedures adopted by the Cor D'Amor Architectural Review Committee (which may be amended from time to time) governing architectural design and control of the Project and all Structures and or Improvements.

**1.4** "**Areas of Association Responsibility**" means (i) the Common Areas; and (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot that the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or another Recorded document executed by the Declarant or the Association.

**1.5** "**Articles**" means the Association's Articles of Incorporation, as hereafter amended.

**1.6** "**Assessment Lien**" means the lien created and imposed by Section 8.10 of this Declaration.

**1.7** "**Assessment Period**" means the period set forth in Section 8.3 of this Declaration.

**1.8** "**Association**" means Cor D'Amor Community Association, an Arizona nonprofit corporation, or such other Arizona nonprofit corporation to be organized by Declarant to own the Common Area and to administer and enforce the Property Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

**1.9** "**Association Rules**" means the rules adopted by the Board pursuant to Section 6.6 of this Declaration, as hereafter amended.

**1.10** "**Board**" means the Association's Board of Directors.

**1.11** "**Builder**" also referred to as the General Contractor, means a person or entity engaged by an Owner for the purpose of constructing any Improvement within the Project. The Builder and Owner may be the same person or entity. Any Builder or General Contractor must be licensed by the State Board of Registration.

**1.12** "**Builder's Deposit**" also referred to as the Performance Deposit, means the amount of \$5,000.00, as may be modified from time to time by the ARC, that a Builder must remit prior to beginning any Residence construction or cutting of trees with a caliper of 4 inches or greater. Builder's Deposit is refundable upon receipt by ARC of proof of 100% completion of the work for which the Builder's Deposit was given. If the Owner or Builder or any of their agents should violate the Declaration or Guidelines and it becomes necessary for the Association to remedy the violation, the cost of the remedy may be charged directly to the Owner or against the Builder's Deposit.

**1.13 "Building Envelope"** means that portion of a Lot that encompasses the maximum allowable developable area of the Lot, as initially determined by the ARC. Modifications to the Building Envelope can only be made by written approval by the ARC.

**1.14 "Bylaws"** means the Association's Bylaws, as hereafter amended.

**1.15 "Common Area" or "Common Areas"** means (a) all portions of the Property other than the Lots, together with the Improvements thereon, and (b) other real property in which the Association now or hereafter has a fee, leasehold or other interest, except that Common Area shall not include any Lot that the Association may acquire through foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

**1.16 "Common Expenses"** means the actual or estimated costs and expenses incurred, or anticipated to be incurred, by the Association or financial liabilities of the Association, including without limitation, the following:

A. The cost of maintenance, management, operation, repair and replacement of the Areas of Association Responsibility;

B. The cost of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

C. The cost of any utilities, trash pickup and disposal, landscaping, and other services benefiting the Owners and the Property to the extent such services are paid for by the Association;

D. The cost of fire, casualty, liability, worker's compensation and other insurance maintained by the Association;

E. Reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Property Documents;

F. The cost of bonding of the directors, officers and employees of the Association, any professional managing agent or any other person handling the funds of the Association;

G. Taxes paid by the Association;

H. Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area or portions thereof;

I. Amounts payable by the Owners or the Association for the maintenance, repair or replacement of streets and drives pursuant to Recorded documents burdening or benefiting the Property;

J. Any cost incurred by the Association in furtherance of the purposes of the Association, the discharge of the obligations imposed on the Association by the

Property Documents or the exercise by the Association of any of the powers or rights granted to it by the Property Documents or applicable law.

**1.17 "Construction Envelope"** means the area specified on a Lot within which all construction activity of ARC approved structures, driveways, parking areas, non native landscaping, water surfaces, decks, walks and improved facilities must occur. This area must be contained within the Building Envelope and will be determined by the ARC upon approval of final plans and specifications for a Residence. Underground utilities may be located outside the Construction Envelope.

**1.18 "Declarant"** means Sedona Stars, LLC, an Arizona limited liability company, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

**1.19 "Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Cor D'Amor, as hereafter amended.

**1.20 "Excavation"** means any disturbance of the surface of the land (except to the extent reasonably necessary for planting of approved vegetation), including any trenching which results in the removal of earth, rock or other substance from a depth of more than 12 inches below the natural surface of the land or any grading of the surface.

**1.21 "FHA"** means the Federal Housing Administration or its successor federal agency.

**1.22 "Fill"** means any addition of earth, rock or other materials to the surface of the land, which increases the natural elevation of such surface.

**1.23 "First Mortgage"** means any mortgage, deed of trust or contract for sale on a Lot that has priority over all other mortgages, deeds of trust and contracts for sale on the same Lot.

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

**1.25 "Improvement" or "Improvements"** means (i) any building (including a Residential Unit), fence, wall or other structure or improvement above or below ground (including, without limitation, any septic system, drywell, swimming pool, spa, shed, basketball pole or hoop, play structure, mail box, patio cover and balcony), (ii) any alley, street, road, sidewalk, curb, driveway or paved parking area, (iii) any recreational facilities (including, without limitation, tot lots, pools, clubhouses, barbeque facilities, ramadas, and trails), (iv) any utility facilities, whether above or below ground (including, without limitation, natural gas, electric, water, sewer, telephone and cable television lines, transformers, pads, manholes, pipes, meters and related equipment), (v) any trees, plants, shrubs, grass, sprinkler and irrigation systems and other landscaping features and fixtures, (vi) any Lot identification signs or entry monumentation, and (vii) street lights.

**1.26 "Indigenous Species"** means a species of plant, whether groundcover, shrub, cactus or tree which is found in and natural to the Sedona Arizona area.

**1.27 "Light Reflectance Value"** means the reflectivity of a surface measured by a calibrated light meter. The value represents the percentage of light reflected from a space pure white. White has an (Herein after to be referred to as LRV) LRV equal to 100% while black has an LRV equal to 0%.

**1.28 "Lot"** means a portion of the Property intended for independent ownership and use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Improvements situated on the Lot.

**1.29 "Lot Survey"** means that information obtained through an engineer depicting existing features, inventory and Lot configuration.

**1.30 "Maintenance Standard"** means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing in the community of which the Property is a part.

**1.31 "Member"** means any Person who is or becomes a Member of the Association.

**1.32 "Mortgage"** means any duly recorded Mortgage or deed of trust encumbering a Lot.

**1.33 "Natural Area"** means that portion of the natural environment lying within a Lot, but outside of the Building Envelope, which must remain undisturbed.

**1.34 "Natural Grade"** means the existing contour of a homesite prior to the time any alterations, grading or site work is done to the Lot.

**1.35 "Natural Vegetation"** means the native trees, shrubbery, brush and plants on Lot or other portion of the Property. It includes, but is not limited to, trees, such as juniper, pinion pine, or Arizona cypress. It also includes, but is not limited to, shrubbery such as scrub oak, mountain mahogany, Manzanita, and other native brush or shrubbery. It shall also include all species of cactus and other native brush. It will only be deemed to exclude grasses and weeds.

**1.36 "Occupant"** means any Person occupying, residing in, or in possession of, a Lot or Residential Unit with the consent of the Owner, including without limitation, the lessee or tenant under an oral or written lease, an assignee or subtenant under a lease.

**1.37 "Official Records"** means the official records of Yavapai County, Arizona.

**1.38 "Owner"** means the record owner of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of

a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation, an Occupant, or a Person who in addition to purchasing a Lot, is assigned any or all of the Declarant's rights hereunder. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. §33-741 et seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

**1.40 "Plat"** means the subdivision plat and any other map of dedication Recorded against the Property, and all amendments, supplements and corrections thereto.

**1.41 "Private Area"** means that part of the Building Envelope adjacent to the Residence or other Improvement that is surrounded by privacy walls and is not Visible from Neighboring Property.

**1.42 "Project"** means the Property located in Yavapai County, Arizona, that is described in Exhibit A attached hereto, together with all improvements located thereon or to be located thereon and all easements, rights, appurtenances, belonging thereto, together with all other Property and Improvements subsequently annexed into the Project.

**1.43 "Property"** means the approximately 38-acre Cor D'Amor Planned Community District, as described on Exhibit A to this Declaration, and includes the Common Areas, the Lots, and all Improvements located thereon.

**1.44 "Property Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Design Guidelines.

**1.45 "Record," "Recording," "Recorded" and "Recordation"** means placing or having placed an instrument of public record in the Official Records of the Yavapai County Recorder, Yavapai County, Arizona.

**1.46 "Resident"** means each natural person occupying or residing within a Residence.

**1.47 "Residential Design Guidelines"** means the rules, guidelines, standards and procedures adopted by the City of Sedona.

**1.48 "Residential Unit"** Also referred to as the Residence, means any building, or portion of building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a single family residence.

**1.49 "Review Fee"** means the non-refundable fee charged by the ARC upon first submittal of preliminary plans for review. Additional fees also may be charged by the ARC if, in its sole discretion, significant changes occur to the scope of the proposed Residence during the course of the review process.

**1.50 "Special Assessment"** means those Assessments levied pursuant to Section 8.8 of this Declaration.

**1.51 "Specimen Plants"** means those indigenous species of trees, cacti and other plants of 4 inch caliper or greater, as measured at a point 1 foot above grade.

**1.52 "Structure"** means anything other than a Residence constructed or erected on a Lot, the use of which requires location on the ground or attachment to something having location on the ground.

**1.53 "Transition Area"** means that part of the Building Envelope that is adjacent to a Natural Area and Private Area and may not be enclosed by walls that are over three (3) feet in height.

**1.54 "VA"** means the Veterans Administration or its successor federal agency.

**1.55 "Visible From Neighboring Property"** means, with respect to any given object, that the object is or would be visible to a person six (6) feet tall, standing at ground level on any part of an adjoining Lot, Common Area or street.

## ARTICLE 2

### PLAN OF DEVELOPMENT

**2.1 Initially Subject to the Declaration.** Declarant hereby declares that the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration. Declarant declares each Lot for separate ownership. Declarant further declares that the terms of this Declaration are for the purpose of protecting the value and desirability of the Property, and all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding on and inure to the benefit of Declarant and all Owners, Occupants and all other Persons having or acquiring any right, title or interest in the Property or any part thereof, their heirs, personal representatives, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Property or any portion thereof, agrees to abide by all of the provisions of this Declaration. This Declaration shall be binding on and be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of this

Declaration with public laws, ordinances and regulations applicable thereto. Declarant declares that Membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

**2.2 Disclosures; Release of Claims.** Declarant hereby informs all prospective Owners and Occupants that:

A. Multiple parcels of real property adjacent to the Property are used for agricultural purposes, and such use may result in noises, odors, dust, pesticide usage or other potential nuisances or hazards affecting the Property.

B. Some parcels of real property adjacent to the Property are vacant and may be developed into uses that generate nuisances or hazards affecting the Property.

C. Each Owner and Occupant, for itself and its family, guests, invitees and licensees, assumes any and all risks, burdens and inconveniences as may now or hereafter be or become associated with the proximity of the Property to the conditions described in this Section 2.1. Neither the Declarant, the Association nor any director, officer, agent or employee of the Association shall be liable to any Owner or Occupant, or its family, guests, invitees or licensees, for any claims or damages to persons or property resulting, directly or indirectly, from the proximity of the Property to the conditions described in this Section 2.1.

D. Each Owner and Occupant, for itself and its family, guests, invitees and licensees, hereby releases the Declarant, the Association and any director, officer, agent or employee of the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including, without limitation, strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this Section 2.1.

**2.3 Disclaimer of Implied Covenants.** Nothing contained in this Declaration, and nothing that may be represented to a potential Owner by real estate brokers or salespersons representing the Declarant, shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any Property subject to this Declaration.

**2.4 Views Not Guaranteed.** Although certain Lots in the Property at any point in time may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot. Neither Declarant nor the Association makes any representation or warranty whatsoever, express or implied, concerning the view that any Lot will have before or after the date this Declaration is Recorded. Any view that exists from a Lot at any point in time may be impaired or obstructed by further construction within or outside the Property, including, without limitation, by construction of Improvements

(including, without limitation, landscaping) by Declarant, construction by third parties (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

### **ARTICLE 3**

#### **ARCHITECTURAL STANDARDS;**

#### **ARCHITECTURAL REVIEW COMMITTEE**

##### **3.1 Appointment of Architectural Review Committee; Standing to Enforce.**

The Property, which is now or hereafter subject to this Declaration, shall be subject to architectural, landscaping and aesthetic review as provided herein. This review shall be in accordance with this Article 3 and such standards as may be promulgated by the Architectural Review Committee, which is hereby established. Authority and standing on behalf of the Association to enforce in any court of competent jurisdiction decisions of the Architectural Review Committee and the provisions of this Article 3 shall be vested in the Board, provided, however, that as long as Declarant has the right to appoint the Architectural Review Committee under this Section 3.1, Declarant shall have the right, but not the obligation, to enforce decisions of the Architectural Review Committee and the provisions of this Article 3, on behalf of the Association, in courts of competent jurisdiction. As long as Declarant owns any part of the Property, the Architectural Review Committee shall consist of Declarant and not less than two (2) Residents appointed by Declarant. At such time as either (a) Declarant no longer owns any part of the Property or (b) Declarant records a written waiver of its right to appoint the Architectural Review Committee, the Board shall appoint the members of the Architectural Review Committee, which shall have such number of members (but not less than three (3) members) as the Board may elect, from time to time. Each member of the Architectural Review Committee appointed by the Board shall serve in such capacity until (i) such member is removed by the Board or (ii) such member resigns such position or dies. Prior to the appointment of the initial members of the Architectural Review Committee, and at any time when there is no one serving on the Architectural Review Committee (whether due to death, resignation or removal), the Board shall have and exercise any and all rights, powers, duties and obligations of the Architectural Review Committee.

**3.2 Jurisdiction of the Architectural Review Committee; Promulgation of Standards.** The Architectural Review Committee shall have exclusive jurisdiction over all original construction and any modifications, additions or alterations to Improvements on any portion of the Property (including, but not limited to, the construction or installation of, or modifications, additions or alterations to: (a) Residential Units and any other buildings or other structures; (b) landscaping; (c) fences and fence walls; (d) heating, ventilating, air conditioning and cooling units; (e) solar panels; (f) paint; and (g) any other construction, modification, addition or alteration affecting the exterior appearance of any structure or Lot). The Architectural Review Committee shall review all modifications, additions or alterations

to Improvements in accordance with the Residential Design Guidelines and any Guidelines adopted by the Architectural Review Committee. The Architectural Review Committee may, to the extent permitted by applicable law, enact additional or different guidelines independent of those promulgated by the City of Sedona, and may from time to time amend, supplement and repeal such guidelines, as long as the guidelines, landscaping standards and application procedures to be used in rendering its decisions do not, except to the extent provided by applicable law, contradict the Residential Design Guidelines of the City of Sedona, and as long as such guidelines are made available to Owners who seek to engage in development of or construction upon any portion of the Property. The Residential Design Guidelines and any additional guidelines adopted by the Committee shall interpret, implement and supplement this Declaration, and shall set forth procedures for Architectural Review Committee review, and may include, without limitation, provisions regarding:

- A. The size of Residential Units, although at no time shall the size of any Residential Unit be smaller than 2800 square feet of living space within such Residential Unit;
- B. The placement of Residential Units and Improvements;
- C. Driveway alignments for Residential Units;
- D. Architectural design, with particular regard to the harmony of the design with surrounding structures and topography;
- E. Landscaping design, content and conformance with the character of the Property, and permitted and prohibited plants;
- F. Requirements concerning exterior color schemes, exterior finishes and materials;
- G. Signage; and
- H. Perimeter and screen wall design and appearance.

The Residential Design Guidelines, as well as any additional guidelines promulgated by the Architectural Review Committee may contain general provisions that are applicable to all of the Lots, Improvements and Common Areas within the Property as well as provisions that vary from one area of the Property to another depending upon the location, unique characteristics and intended use thereof. The Architectural Review Committee may establish one or more subcommittees consisting of one or more members of the Architectural Review Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Review Committee to approve or disapprove the construction, installation or alteration of Improvements within a specified area of the Property. The Residential Design Guidelines shall have the same force and effect as the Association Rules.

**3.3 Submission and Review of Plans.** No original construction, modification, alteration or addition subject to the Architectural Review Committee's jurisdiction (including, but not limited to, landscaping) shall be commenced until it has been approved or is deemed approved by the Architectural Review Committee as provided herein. The Declarant and any Owner or other Person seeking to construct or install any new Improvements or to make any modification, alteration or addition to any existing Improvement (including, but not limited to, landscaping) upon any portion of the Property (or to cause same to be constructed, installed or made) shall first submit to the Architectural Review Committee detailed plans, specifications and elevations relating to the proposed construction, installation, modification, alteration or addition; said plans, specifications and elevations (including, but not limited to, a detailed site plan) shall be sent by:

A. Personal delivery to designated member(s) of the Architectural Review Committee, in which case the Person delivering the same shall obtain a signed and dated receipt from the recipient thereof (in which event they shall be deemed received as of the date indicated by the recipient on such receipt); or

B. By U.S. mail, postage paid, certified mail, return receipt requested (in which event they shall be deemed received as of the date indicated on the return receipt).

The Architectural Review Committee shall have forty-five (45) days after receipt of such plans, specifications and elevations to approve or disapprove of the proposed construction, installation, modification, alteration or addition or to request additional information, and, if the Architectural Review Committee disapproves, to give Declarant, Owner or other Person reasonably detailed written reasons for such disapproval. If the Architectural Review Committee fails either to approve or disapprove the proposed construction, installation, modification, alteration or addition (or to request additional information) within said forty-five (45) day period, such proposed construction, installation, modification, alteration or addition shall be deemed disapproved.

**3.4 Obligation to Obtain Approval.** Except as otherwise expressly provided in this Declaration or the Residential Design Guidelines, without the prior written approval by the Architectural Review Committee of plans and specifications prepared and submitted to the Architectural Review Committee in accordance with the provisions of this Declaration and the Residential Design Guidelines:

A. No Improvements, alterations, repairs, excavation, grading, landscaping or other work shall be done that in any way alters the exterior appearance of any property or Improvements thereon from their natural or improved state existing on the date such property first becomes subject to this Declaration; and

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

C. No exterior trees, bushes, shrubs, plants or other landscaping shall be planted, placed upon, or removed from, the Property except in compliance with plans and specifications therefor that have been submitted to and approved by the Architectural Review Committee in accordance with the Residential Design Guidelines and except in compliance with Section 3.12.

D. No material changes or deviations in or from the plans and specifications for any work to be done on the Property, once approved by the Architectural Review Committee, shall be permitted without approval of the change or deviation by the Architectural Review Committee.

E. No other item or matter required by this Declaration to be approved in accordance with this Article 3 shall be done, undertaken or permitted until approved by the Architectural Review Committee.

**3.5 Changes to Interiors of Residential Units or Other Structures.** Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of a Residential Unit or other Improvement on such Owner's Lot or to paint the interior of that Residential Unit or such other structure any color desired, except to the extent such remodeling or painting is Visible From Neighboring Property or other structure or affects the exterior appearance of such Residential Unit or other structure.

**3.6 Other Approvals; Liability.** No approval by the Architectural Review Committee of any proposed construction, installation, modification, addition or alteration shall be deemed to replace or be substituted for any building permit or similar approval required by any applicable governmental authority, nor shall any such approval be deemed to make the Architectural Review Committee (or the Board or the Association) liable or responsible for any damage or injury resulting or arising from any such construction, modification, addition or alteration. Neither Declarant, the Association, the Board nor the Architectural Review Committee (nor any member thereof) shall be liable to the Association, any Owner or any other Person for any damage, loss or prejudice suffered or claimed on account of:

A. The approval or disapproval of any plans, drawings or specifications, whether or not defective;

B. The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or

C. The development of any Lot.

**3.7 Fee.** The Architectural Review Committee may establish a reasonable processing fee to defer the costs of the Architectural Review Committee in considering any

request for approvals submitted to the Architectural Review Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted. Such fee, if established and charged by the Architectural Review Committee, shall be set at such reasonable level as the Architectural Review Committee may estimate will be necessary to defray the reasonable costs and expenses of the Architectural Review Committee in reviewing and evaluating any such request or application, and may include, if the Architectural Review Committee deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the Architectural Review Committee by an architect, lawyer or engineer.

**3.8 Inspection.** Any member or authorized consultant of the Architectural Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot, after reasonable notice to the Owner or Occupant of such Lot, to inspect the Improvements constructed or being constructed on such Lot, and to ascertain that such Improvements have been, or are being, built in compliance with this Declaration, the Residential Design Guidelines and any approved plans, drawings or specifications.

**3.9 Waiver.** Approval by the Architectural Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring approval of the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

**3.10 Appeal to Board.** Except as provided in this Section 3.10, any Owner or Occupant aggrieved by a decision of the Architectural Review Committee may appeal the decision to the Board in accordance with procedures to be established in the Architectural Review Committee's standards and procedures. If the decision of the Architectural Review Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Review Committee shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, until termination of Declarant's right to appoint the members of the Architectural Review Committee pursuant to Section 3.1, no decision of the Architectural Review Committee may be appealed to the Board.

**3.11 Nonapplicability to Declarant.** The provisions of this Article 3 shall not apply to any portions of the Property owned by Declarant, by any Declarant Affiliate, or by a trustee for the benefit of any of the foregoing so long as any Improvements constructed thereon (or any additions, modifications or alterations to any such improvements) are constructed or made in a good and workmanlike fashion and are generally comparable in terms of quality of construction to other Improvements theretofore constructed by Declarant, or by any Declarant Affiliate on the Property (or on other property adjacent to or near the Property). Further, this Article 3 may not be amended without the written consent of Declarant as long as Declarant, any agent engaged by Declarant, or a trustee for the benefit of any of the foregoing owns any of the Property.

**3.12 Landscaping.** All Lots, excluding driveways, parking areas and areas covered by structures, shall be landscaped in a manner and using plants and soil approved in advance by the Architectural Review Committee. No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon any Lot except in compliance with plans and specifications therefor that have been submitted to and approved by the Architectural Review Committee in accordance with this Article 3 and the Residential Design Guidelines. The planting of any type of deciduous tree, bush, shrub or plant shall be highly discouraged. Any planting of this type is subject to prior committee review and approval. No material changes or deviations in or from the plans and specifications for any work to be done on any Lot, once approved by the Architectural Review Committee, shall be permitted without approval of the change or deviation by the Architectural Review Committee. No structure, shrubbery or other vegetation shall be permitted to exist on any Lot or other portion of the Property, the height or location of which shall be deemed by the Architectural Review Committee either to constitute a traffic hazard or to be unattractive in appearance or unreasonably detrimental to other portions of the Property. As an aid to freer movement of vehicles at and near street intersections and to protect the safety of pedestrians, property and the operators of vehicles, the Board or Architectural Review Committee may impose further limitations on the height of fences, walls, gateways, ornamental structures, hedges, shrubbery and other fixtures, and construction and planting on corner Lots at the intersection of two or more streets or roadways. None of this Section 3.12, Section 3.3 nor Section 3.4 above shall be construed to prevent normal landscape maintenance or the replacement of dead or diseased plants with other similar plants (as long as the replacement plants are permitted by the Residential Design Guidelines).

**3.13 Natural Vegetation.** The Natural Vegetation on the Property shall not be cut, destroyed or removed except as approved in writing by the Architectural Review Committee. If such Natural Vegetation is cut, destroyed or removed, except as stated above, the Architectural Review Committee, in addition to other remedies, may require the replanting or replacement of the same, the cost thereof to be borne by Owner of said Lot or person responsible for the removal of vegetation in any Common Area. No provision of this Section 3.13 shall prohibit the simple pruning or thinning of said Natural Vegetation.

**3.14 Exemptions.** Anything herein to the contrary notwithstanding, Declarant shall have the right to exempt one or more builders designated by Declarant from all or portions of the provisions of this Article 3 as long as such builder constructs Improvements in a good and workmanlike fashion and subject to any other conditions imposed by Declarant. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, its duly authorized agents, or such builders designated by Declarant, of structures, Improvements or signs necessary or convenient to the development or sale of Lots and Parcels within the Project.

## ARTICLE 4

### USES AND RESTRICTIONS

**4.1 Mineral Exploration.** No part of the Property shall be used for purposes of boring, mining, exploring for or removing water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind (except to the limited extent required in connection with normal construction activities).

**4.2 Permitted Uses.** The Lots shall be used, improved and devoted exclusively for residential use. No time-sharing use of any Lot or Residential Unit shall be permitted. An Owner or Occupant may conduct a business activity within or from a Residential Unit (including an accessory building or garage) as long as:

A. The existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit;

B. The business activity conforms to all applicable zoning ordinances and other requirements for the Property;

C. The business activity does not involve persons coming on to the Lot or the door-to-door solicitation of other Owners or Occupants;

D. The business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners or Occupants (as may be determined from time to time in the sole discretion of the Board);

E. The business activity does not involve more than one (1) employee working in or from the Residential Unit who is not an Owner or Occupant thereof;

F. No more than twenty percent (20%) of the livable area of the Residential Unit is used for the business activity;

G. The Residential Unit is not used as a storage facility for business activities conducted elsewhere;

H. The volume of vehicular or pedestrian traffic or parking generated by such business activity shall not cause congestion or exceed the amount of traffic or parking that is customary in a residential neighborhood;

I. The business activity does not use flammable liquids or hazardous materials in quantities that are not customary for residential use; and

J. The business activity does not use large vehicles that are not customary for residential use.

The term "business activity" as used in this Section 4.2 shall be construed to have its generally accepted meaning and shall include, without limitation, any occupation, work or activity undertaken by an Owner on an ongoing basis that involves the provision of goods or services to persons other than the Occupants of an Owner's Residential Unit and for which the Owner or Occupant 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 or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof for residential occupancy shall not be considered a business activity within the meaning of this Section 4.2.

**4.3 Additional Structures.** No additional structures, including but not limited to, storage sheds, tool sheds, gazebos, casitas, or similar structures (each, an "**Additional Structure**") shall be placed, erected or maintained upon any part of the Property except:

A. As an integral part of a Residential Unit (including materials, color and the like); or

B. For temporary use in connection with construction activities on the Property conditioned on removal of such Additional Structure immediately after the completion of construction (for purposes hereof, "temporary" shall mean no longer than twelve months).

In either case, the Additional Structure shall comply with all applicable laws, ordinances and regulations, and shall not be attached at any point to any fence (including any block wall fence). Any Owner or other Person who wishes to erect such Additional Structure must comply with all other provisions of this Declaration and, in particular, shall submit plans for the proposed Additional Structure to the Architectural Review Committee for review, and shall not commence erection or construction of such Additional Structure until such plans are approved by the Architectural Review Committee.

**4.4 Leasing of Residential Units.** An entire Residential Unit may be leased from time to time by an Owner. The leasing of a Residential Unit shall be evidenced by a written lease agreement that provides, among other things, that: (i) the lease agreement is for a period of not less than thirty (30) days; (ii) the terms of the lease agreement are subject in all respects to the provisions of the Property Documents; and (iii) the Occupant has received and agrees to be bound by the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Property Documents as though such Occupant was an Owner (except that an Occupant shall not have any voting rights appurtenant to the Lot occupied by such Occupant except pursuant to an express written assignment complying with Section 7.3). The Owner shall deliver a copy of the lease agreement and any amendments thereto to the Association within ten (10) days after it is executed. Each Owner shall cause any Occupants of its Lot to comply with the Property

Documents and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such Occupants, notwithstanding the fact that such Occupants are also fully liable for any violation of each and all of the Property Documents.

**4.5 Violation of Law or Insurance.** No Owner shall permit anything to be done or kept in or upon a Lot that will result in the cancellation or increase in premium, or reduction in coverage, of insurance maintained by any other Owner or the Association or that would be in violation of any law.

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

**4.7 New Construction; Construction Activities.** All Improvements erected on a Lot or within Common Areas shall be of new construction. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Review Committee. Any construction or Improvements likely to generate high levels of dust and noise shall be limited to the hours between 7:00 a.m. and 6:00 p.m., Monday through Friday. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Architectural Review Committee, which may also require screening of the storage areas.

**4.8 Fire/Building Repair.** If any Residential Unit or other Improvement is destroyed or partially destroyed by fire, act of God or as the result of any other act or thing, the Owner or Occupant shall cause the damage to be repaired and the Residential Unit or Improvement reconstructed or razed within twelve (12) months after such damage or destruction, at the sole cost and expense of the Owner or Occupant, and notwithstanding the unavailability or delay in receipt of proceeds of any insurance policy. Notwithstanding the foregoing, if a dangerous condition exists because of such damage, it immediately shall be corrected so as to not cause harm to another Person. Any such repair or reconstruction work shall be performed in compliance with all applicable provisions of this Declaration, and the Owner of such Lot shall take such steps as are reasonably necessary to prevent damage to surrounding Lots, Common Areas or other portions of the Property and injury to

persons as may result from or arise in connection with the destroyed or damaged Residential Unit or Improvement or the repair or reconstruction activities with respect thereto.

**4.9 Restriction on Gates.** No Owner shall install a gate on any portion of a Lot to obtain direct access from such Lot to a Common Area without specific written approval from the Architectural Review Committee.

**4.10 Garages and Driveways.** Garages situated on Lots shall be used only for the parking of motor vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Review Committee. The interior of garages shall be maintained by the Owners or Residents thereof in a neat, clean and slightly condition. Garages may be used for the storage of non-hazardous material as long as the storage of material allows sufficient space for the parking of at least one (1) motor vehicle. No garage door shall remain open except when necessary for access to and from the garage. All driveways on Lots shall be composed of either concrete or a form of brick pavers, provided that the composition, color and design of such pavers is approved by the Architectural Review Committee.

**4.11 Temporary Occupancy and Temporary Buildings.** No trailer, basement or other portion of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. No temporary construction buildings or trailers may be installed or kept on any Lot without the prior written approval of the Architectural Review Committee. Any such temporary buildings or trailers approved by the Architectural Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any Lot for a period in excess of twelve months without the prior written approval of the Architectural Review Committee.

**4.12 Fences, Interferences and Obstructions.** All fences shall be of block construction (except as may be otherwise permitted with the prior written consent of the Architectural Review Committee) and, except as otherwise approved by the Architectural Review Committee, shall be color coordinated with the exterior of the Residential Unit enclosed by or upon the same Lot as the fence. No fence shall exceed eight (8) feet in height (measured as feet above grade on either side of such wall) provided that no fence within fifteen (15) feet of the front property line of a Lot shall exceed three (3) feet in height (provided that the Architectural Review Committee shall have the authority to establish and enforce even more restrictive limitations on the height, locations and appearance of fences and fence walls, either in individual cases or as a general restriction on portions or all of the Property, where necessary or appropriate, in the reasonable judgment of the Architectural Review Committee, to comply with applicable zoning, building or public safety ordinances). The foregoing shall not apply to boundary walls or fences (if any) constructed by Declarant along Property lines bordering public rights-of-way, provided, however, that such boundary walls or fences shall be constructed to comply with applicable municipal zoning and other

laws and ordinances. No fence shall be permitted to interfere with existing recorded restrictions or easements or required drainage or detention areas. Except as otherwise provided by applicable law or governmental rule, regulation or ordinance, and subject to any applicable restrictions or requirements set forth in any Recorded Plat, fences may be constructed in or over a recorded utility easement; provided, however, that if a utility company requires access to such easement, it shall be the responsibility of the Owner of the applicable Lot and that Owner shall bear the entire expense of removing and replacing such fence.

**4.13 Nuisances.** No rubbish or debris of any kind (including animal waste) shall be placed or permitted to accumulate for any unreasonable length of time on any portion of the Property, and no odors shall be permitted to arise therefrom, that renders the Property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Property in the vicinity thereof or to the Owners or Occupants. No noxious, destructive or offensive activity, or any activity constituting an unreasonable source of annoyance, shall be conducted on any portion of the Property. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except ordinary intercom systems or security devices used exclusively for security purposes, shall be located, used or placed on the Property. The Board in its sole discretion shall have the right to determine the existence of any such activity or item. The Association shall have the standing and authority to institute legal proceedings to abate such activity or to secure the removal of such item. Furthermore, the Board shall have the right to remove any such activity or item at the expense of the Owner or Occupant responsible for the nuisance. Each Owner and Occupant shall refrain from any act on or use of his Lot or the Common Area that could reasonably cause embarrassment, discomfort or annoyance to other Owners or Occupants, and the Board shall have the power to make and enforce reasonable rules and regulations in furtherance of this provision. The provisions of this Section 4.13 shall not apply to construction activities of the Declarant.

**4.14 Utility Service.** No lines or wires 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 approved by the Architectural Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Review Committee.

**4.15 Underground Facilities.** No cesspool, drywell or well may be dug or installed without the prior written approval of the Architectural Review Committee.

**4.16 Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street,

pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Architectural Review Committee.

**4.17 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 normal use of residential barbeques or other similar outside cooking grills or outdoor fireplaces.

**4.18 Drainage; Wash Channels.** No Improvement or other impediment shall be constructed, installed, planted, placed or maintained on or within any wash channel, drainage device or area subject to drainage easements, in a manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Property, or any part thereof, or for any Lot as shown on the drainage plans on file with the City of Sedona or that may be deemed by the Board to be a detriment to utilities located under or near such Improvement. No Person shall alter the grading of a Lot or alter the natural flow of water over and across a Lot without the prior written approval of the Architectural Review Committee. It shall be the responsibility of each Owner to maintain and repair any wash channel or other drainage easement or device located within the boundaries of their Lot, and to ensure that such wash channel or drainage device is kept free of any weeds or debris that might impede the flow of water through the channel or device.

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

**4.20 Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style that are required by the City of Sedona or approved by the Architectural Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property. The Board shall have the right to subscribe to a trash service for the use and benefit of the Association, to which all Owners and Occupants shall be required to subscribe. Any costs of said subscription shall be billed separately to the Owners or Occupants. The Board shall also have the right to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. No outdoor incinerators shall be kept or maintained on any Lot or other portion of the Property.

**4.21 Tanks.** No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on the Property unless such tanks are either: (a) buried underground; or (b) of such size and height, in such location and attractively screened and not Visible From Neighboring Property in such manner, as may be required by the Architectural Review Committee. Nothing herein shall be deemed to prohibit use or storage upon the Property of propane or similar fuel tanks with a capacity of ten (10) gallons or less used in connection with a normal residential gas outdoor patio heater, barbecue, grill or fireplace.

**4.22 Signs.** No billboards or signs of any type or character that are Visible From Neighboring Property shall be erected or maintained on any portion of the Property or on any Lot, except for signs used by Declarant to advertise the Property (or to identify builders, contractors or lenders) during the construction and sales period and except for any sign erected by the Association. Nothing herein shall be deemed to prohibit:

A. Signs required by legal proceedings;

B. Residential Unit address plates identifying the address of such Residential Unit, provided the size, color, content and location of such address plates have been approved in writing by the Architectural Review Committee;

C. The placing upon the exterior of any Residential Unit (or upon the Lot containing the Residential Unit) a single "For Sale" sign placed by a professional residential real estate brokerage company or the Owner of the Lot, provided that such sign shall be consistent with provisions set forth in the Residential Design Guidelines;

D. The placing upon the exterior of any Residential Unit (or upon the Lot containing the Residential Unit) of political signs that are in conformance with any applicable state, county or municipal code erected not more than forty-five (45) days prior to an election and that must be removed not later than seven (7) days following the election;

E. The placing upon the exterior of any Residential Unit (or upon the Lot containing the Residential Unit) a single security system sign placed by a professional residential security alarm company that has installed a security alarm system in the Residential Unit, provided that such sign is consistent with provisions set forth in the Residential Design Guidelines; or

F. The placing upon any portion of the Property such directional signs, subdivision identification signs, street signs or similar signs as may be approved by the Architectural Review Committee for installation or maintenance by the Association.

**4.23 Heating, Ventilating and Air Conditioning Equipment; Solar Collecting Panels or Devices.** No heating, air conditioning or evaporative cooling units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit unless concealed by walls and not Visible From Neighboring Property or other Improvement on a Lot. . No air conditioning unit shall be installed on the ground level as to be Visible From Neighboring Property. Any such unit that would be Visible From Neighboring Property shall be shielded so as not to be Visible From Neighboring Property by either walls approved by the Architectural Review Committee or Natural Vegetation.

**4.24 Antennas, Aerials, Poles, Towers and Dishes.** No television, radio, short-wave, microwave, satellite, flag or other antenna, aerial, pole, tower or dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be placed, erected, constructed or maintained upon the Property (including, but not limited to, upon the roof or exterior walls of any Residential Unit or Improvement), unless it complies with the Residential Design Guidelines, the Association Rules and applicable law. The Architectural Review Committee may establish, as part of the Architectural Review Committee Rules, rules and regulations relating to such antennas, aerials, poles, towers and dishes (including, but not limited to, the location, placement, and appearance thereof), which rules and regulations shall be subject to the requirements of applicable law. Notwithstanding the foregoing, the Association Rules shall not prohibit:

A. An antenna or dish that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one (1) meter or less in diameter;

B. An antenna or dish that is designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one (1) meter or less in diameter or diagonal measurement; or

C. An antenna or dish that is designed to receive television broadcast signals; provided, however, that the following requirements shall be adhered to:

1. Antennas and dishes shall be placed, to the extent feasible, in locations that are not visible from ground level view from the street(s) running immediately in front of or along the side of a Residential Unit or adjacent Lots or Common Areas, provided such restriction does not impair the reception of an acceptable signal. If such a location impairs the reception, the antenna or dish shall be placed at the minimum height that does provide an acceptable signal and that minimizes visibility from ground level view from such streets and adjacent Lots or Common Areas. Antennas and dishes that are visible from ground level on the street(s) running immediately in front of or along the side of a Residential Unit, or adjacent Lots or Common Areas shall be shielded from view by a wall approved by the Architectural Review Committee or by Natural Vegetation.

2. If Visible From Neighboring Property, antennas and dishes shall be painted in a fashion that blends into the background against which they are mounted, provided that such painting would not interfere with reception. Mounting material, accessories, and cabling shall be painted in a fashion that blends into the background against which the antenna or dish is mounted.

3. Outdoor wiring to antennas and dishes shall be routed in such a manner as to minimize or eliminate its visibility from ground level view from such streets and adjacent Lots and Common Areas, provided that such routing does not unreasonably add to the cost of the installation.

4. Guidance should be sought from the Architectural Review Committee prior to installation when an Owner is uncertain whether the proposed installation complies with these provisions. Nothing set forth in this Section 4.24 shall be deemed to contradict federal law regarding the subjects contained in this Section 4.24.

**4.25 Basketball Goals or Similar Structures.** No basketball hoop, goal, backboard or similar structure or device that is to be permanently mounted on a pole, wall or roof shall be placed or constructed upon the front yard, front elevation or front roof surface of any Improvement (except upon the Common Area). For purposes of the foregoing sentence, the term "front" shall be deemed to mean visible from ground level view from the street(s) running immediately in front of a Residential Unit or other structure. A basketball goal may be placed on a Lot in a location where such goal would be visible from a street running along the side of a Residential Unit as long as: (a) such goal is not visible from a street running in front of such Residential Unit; (b) such goal is located within an enclosed rear yard on such Lot; and (c) the location, and any proposed methods of screening from view, of such goal are approved in advance, in writing, by the Architectural Review Committee. Notwithstanding any provision in this Declaration, an Owner may use a basketball goal that can be rolled into the driveway of a Residential Unit and is visible from a street running along the side or front of the Residential Unit, provided that the basketball goal is stored in a manner that is not visible from a street running along the side or front of the Residential Unit when the basketball goal is not in use.

**4.26 Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed or maintained exclusively within a fenced yard or otherwise concealed and not Visible From Neighboring Property.

**4.27 Lights.** No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot, except that security lighting shall be permitted if such lighting is consistent with the provisions for security lighting in the Residential Design Guidelines.

**4.28 Window Coverings.** No reflective materials, including but not limited to aluminum foil, reflective screens or glass, mirrors or similar type material, shall be installed or placed upon the outside or inside of any windows. No window that would be Visible From Neighboring Property shall at any time be covered with bed sheets, newspapers or any other like materials.

**4.29 Animals.** No animals, horses, livestock or poultry of any kind shall be raised, bred or kept on any Lot; provided, however, that nothing herein shall be construed as prohibiting the keeping of a reasonable number of ordinary household pets in or on a Lot ("**Permitted Pets**"), subject to rules and regulations adopted by the Board, and further provided that such Permitted Pets are not kept, bred or raised for commercial purposes. Notwithstanding the foregoing, upon the written request of any Owner or Occupant, the Architectural Review Committee shall determine, in its sole and absolute discretion, whether, for the purposes of this Section 4.29 (i) a particular Permitted Pet is a nuisance or making an unreasonable amount of noise, (ii) a particular pet is a Permitted Pet, and (iii) the number of Permitted Pets kept on a Lot is reasonable. Any decision rendered by the Architectural Review Committee in this regard shall be enforceable in the same manner as other restrictions set forth in this Declaration. No structure for the care, housing or confinement of any Permitted Pet shall be maintained so as to be Visible From Neighboring Property. Any Owner, Occupant or other person who brings or permits a pet to be on the Property or street shall be responsible for immediately removing any feces deposited by said pet.

**4.30 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (but only during the period of construction) of a Residential Unit, appurtenant structures, or other Improvements, or such machinery or equipment as the Association may require for the operation and maintenance of the Property. Lawn and garden equipment may be kept on a Lot provided such equipment is housed and stored in a garage or in a building approved by the Architectural Review Committee and is not Visible From Neighboring Property.

**4.31 Vehicles and Parking.** As used in this Declaration, the term "**Motor Vehicle**" means a car, van, truck, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motorized vehicle, and the term "**Recreational Vehicle**" means a recreational vehicle, motor home, travel trailer, tent trailer, boat or similar vehicle. The following provisions apply to all Owners and Occupants of the Property, but do not apply to Declarant or its employees, agents, affiliates, contractors or subcontractors during the course of construction activities upon or about the Property:

A. Parking and/or storing of Recreational Vehicles on a shared driveway is prohibited. A Recreational Vehicle may be stored on a Lot, but must be shielded by either a 5 to 8 foot wall (measured by feet above grade on either side of such wall) or Natural Vegetation as such shielding may be approved by the Architectural Review Committee so as to reduce, to the extent deemed reasonable and sufficient by the Architectural Review Committee, the visibility of such Recreational Vehicle from neighboring property. The use or occupancy of a Recreational Vehicle as living quarters on a permanent basis is strictly prohibited on any portion of a Lot or the Property. A Recreational Vehicle may be used as living quarters for a period of

seven (7) days, provided such use complies with the other provisions of this Declaration.

B. Recreational Vehicles may be parked on a street or driveway for purposes of loading or unloading for not more than 72 hours.

C. Any Motor Vehicles stored or parked on a Lot may not be in the process of being reconstructed, modified or rebuilt on the Lot unless an emergency threatening persons or property exists or unless such work is not Visible From Neighboring Property or any Common Area or street. No motor vehicle may be constructed on a Lot, even if such construction is not Visible From Neighboring Property.

D. No inoperable Motor Vehicle may be stored or parked on any Lot or other property so as to be Visible From Neighboring Property or to any Common Area or any street.

#### **4.32 Height Restrictions.**

A. The maximum height of all buildings, structures, outbuildings and appurtenances on Lot Number 6 shall be limited to a topographic elevation of 4,467 as shown on the recorded plat of Cor D'Amor, exclusive of chimneys, and shall be a single story.

B. The maximum height of all buildings, structures, outbuildings and appurtenances on Lots 1 through 3 shall be limited to a topographic elevation of 4,479 as shown on the recorded plat of Cor D'Amor, exclusive of chimneys.

C. The maximum height of all buildings, structures, outbuildings and appurtenances on Lots 7, 9 and 10 shall not exceed 18 feet in height, and shall not be entitled to the application of alternate standards as permitted under Section 905 of the Land Development Code.

D. The maximum height of all single story buildings, structures, outbuildings and appurtenances on Lots 1 through 16 shall not exceed 18 feet, measured parallel to natural grade.

#### **4.33 Footprint Restrictions.**

A. The maximum footprint for all buildings, structures, outbuildings and appurtenances constructed on Lots 1 through 16 shall be limited to 62.5% lot coverage for a single level structure and 37.5% for a two-story structure, with the upper level not to exceed two-thirds of the lower level building footprint.

B. Any second story construction on Lots 7 or 9 shall be setback a minimum of 5 feet from the edge of the first floor wall pane facing Highway 89A.

**4.34 Street and Private Rights of Way.** All named streets within the Property shall be deemed public streets pursuant to this Declaration. Any common driveways within the Property shall be deemed private rights of way. Any common driveway that is considered a private right of way under this Declaration may be gated, provided that such gate is approved by the Architectural Review Committee prior to construction, and that any costs incurred in the planning, construction, or maintenance of such gate is borne completely by the Owners or Occupants whose Lots it serves.

**4.35 Towing of Vehicles.** The Board shall have the right to have any Motor Vehicle or Recreational Vehicle that is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Property Documents towed away at the sole cost and expense of the owner of the Motor Vehicle or Recreational Vehicle. Any expense incurred by the Association in connection with the towing of any Motor Vehicle or Recreational Vehicle shall be paid to the Association upon demand by the owner of the Motor Vehicle or Recreational Vehicle. If the Motor Vehicle or Recreational Vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of Assessments.

**4.36 Trail Restriction in Common Areas.** Ingress and egress through the designated Common Areas shall be limited to marked trails. When using Common Areas, Owners, Occupants and their guests and invitees may not leave marked trails and must remain on marked trails, which shall be open for use daily from one hour before sunrise to one hour after sunset. In the absence of a marked trail, Occupants and guests shall not enter onto, disturb or destroy the portions of the Common Areas inhabited by Natural Vegetation.

**4.37 Mailboxes.** No Owner or Occupant may install a mailbox or other site to which the U.S. Postal Service shall or is intended to deliver mail. The Declarant shall cause the installation of group mailboxes at location that Declarant or its successor, assign or designee determines to be appropriate for the Property. The Board shall assign a mailbox for each Lot within such group mailboxes, although such mailboxes, mailbox numbers and all other matters regarding the location, style and assignment of mailboxes within the Property shall be as determined by the Board once initially determined or established by Declarant.

**4.38 Sewer and Septic Tank Pumps.** All septic or sewer pumps installed on any Lot shall be Environment One Model 2012 pump or such other models as may be approved by the Board.

**4.39 Variances and Waivers.** The Architectural Review Committee may, at its option and in extenuating circumstances, grant variances from or waive any of the

restrictions set forth in this Article 4 if the Architectural Review Committee determines in its discretion that (i) such restriction creates an unreasonable hardship or burden on an Owner or Occupant, (ii) a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete, or (iii) the activity permitted under the variance or waiver will not result in an unsafe, unsanitary or aesthetically displeasing condition or have any substantial adverse effect on the Owners and Occupants of the Property and is consistent with the high quality of life intended for Occupants of the Property and shall not result in a substantial departure from the common plan of development for the Property contemplated by this Declaration. If any restriction set forth in this Article 4 is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the extent necessary and as allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable. In addition, all portions of the Property shall continue at all times to be subject to any and all applicable zoning laws and ordinances; provided, however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

## ARTICLE 5

### EASEMENTS

**5.1 Easement for Use of Common Area.** Every Owner and Occupant shall have a non-exclusive right and easement of use and enjoyment in, to and over the Common Area, which right shall be appurtenant to and shall pass with the title to each Lot, subject to the provisions of this Declaration including, without limitation, the following:

A. The right of the Association to dedicate, convey, transfer or encumber the Common Area; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owners and Occupants of the Lot and their guests and invitees.

B. Any rights and easements granted to Declarant in this Declaration.

C. The right of the Association to regulate or prohibit the use of the Common Area through the Association Rules or otherwise.

D. The rights and easements, if any, reserved or granted to the Declarant or any other Person in the deed conveying the Common Area to the Association.

E. The right of the Association to suspend the right of an Owner or Occupant to use the Common Area (other than the right of an Owner or Occupant and its family, tenants and guests to cross over a portion of the Common Area used as access to the Lot and to use any streets which are part of the Common Area for

ingress or egress to the Lot). Any suspension of the rights of an Owner or Occupant to use and enjoy recreational facilities on the Common Area shall automatically, without any further action, also act as a suspension of any rights or privileges any guest, family member or invitee of such Owner or Occupant might otherwise have to use and enjoy such recreational facilities.

F. If a Lot is leased or rented by the Owner thereof, the Occupant and any Persons residing with such Occupant shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area (except the right to cross over any portion of the Common Area used as access to the Lot and to use any streets which may be part of the Common Area for ingress and egress to the Owner's Lot) until the termination or expiration of such lease.

## **5.2 Utility Easements.**

A. There are hereby created easements upon, across, over and under the Common Areas, Lots and other portions of the Property, as shown on the Plat, for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of these easements, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Areas, Lots and other portions of the Property, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Areas, Lots and other portions of the Property except as initially designed, approved and constructed by the Declarant or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot).

B. There is hereby reserved to the Association, the power to grant future easements upon, across, over and under all or any portion(s) of the Common Areas for installation, replacement, repair, and maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity, and for delivering or providing public or private services such as refuse collection and fire and other emergency vehicle access (which easements shall also include appropriate rights of ingress and egress to facilitate such installation, replacement, repair and maintenance, and the delivery or provision of such public, municipal or emergency services), provided that no such easement shall interfere with a Residential Unit (or their reasonable use) or with Declarant's construction and sales activities. Such easements shall require the holder of the easement to repair any damage caused to the property of any Owner or Occupant. The Association shall have the right to grant any such easement as either (a) a "blanket" easement covering all or a significant portion of the Common Area or (b) if the Board deems it appropriate, an easement affecting a smaller, more particularly identified portion of the Common Area.

**5.3 Easements for Ingress and Egress.** There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Areas. There are also hereby created easements for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots and their guests, families, and invitees. There are also hereby created easements upon, across and over the Common Areas and all public/private streets, public/private roadways, public/private driveways and public/private parking areas within the Property for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. As long as Declarant is marketing Lots or other portions of the Property, Declarant shall have the right to restrict the use of the parking spaces on the Common Areas. In the event of any conflict or inconsistency between this Section 5.3 and any other provision of this Declaration, this Section 5.3 shall control.

**5.4 Declarant's Easements.** Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements that the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots or other portions of the Property owned by Declarant (including any undeveloped portions of the Property) for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Property or portion of the Property; provided, however, that Declarant shall keep the Areas of Association Responsibility, Lots and other portions of the Property in a reasonably clean and neat fashion. The Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant by this Declaration. In the event of any conflict or inconsistency between this Section 5.4 and any other provision of this Declaration, this Section 5.4 shall control.

**5.5 Easements in Favor of Association.** The Lots (except for the interior of a Residential Unit or other buildings) are subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

- A. For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;
- B. For correction of emergency conditions on one or more Lots or on portions of the Areas of Association Responsibility accessible only from such Lots;
- C. For the purpose of enabling the Association, the Board, the Board or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Property Documents; and

D. For inspection of the Lots during reasonable hours to verify that the Owners or Occupants, and their families, guests and invitees, are complying with the provisions of the Property Documents.

**5.6 Easement for Unintended Encroachments.** There are reserved and granted (i) for the benefit of each Lot, over, under and across each other Lot and the Common Areas, and (ii) for the benefit of the Common Areas, over, under and across each Lot, such non-exclusive easements for encroachment, support, occupancy and use of such portions of Lots and/or Common Areas as are encroached upon, used and occupied as a result of any original construction design, alteration or restoration authorized by this Declaration, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any Residential Unit or other Improvement or any portion thereof, or any other reason or cause other than intentional encroachment. If any Improvements are partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement(s) shall exist for as long as the encroachment exists; provided, however, that no easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may be (but need not be) cured by repair and restoration of the Residential Unit or other Improvement.

## ARTICLE 6

### FORMATION, RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

**6.1 Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration.

**6.2 Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Property Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Property Documents by the Owner (or any Occupant of the Owner's Lot) and to impose late charges for payment of such fines if such fines remain unpaid fifteen (15) or more days after the due date, provided that the late charge shall not exceed the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid fine, or such greater amount as permitted under applicable law.

**6.3 Common Areas.** The Association shall own the Common Areas and, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of the Areas of Association Responsibility and shall keep the Areas of Association Responsibility in good, clean, attractive and sanitary condition, order

and repair, pursuant to the terms and conditions hereof. Except for public parks, if any, within the Property, the City of Sedona is not responsible for and will not accept maintenance of any private facilities, landscaped areas, or other property within the Property.

**6.4 Personal Property and Real Property for Common Use.** The Association may acquire, hold and dispose of tangible and intangible personal property and real property. The Association shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the Property as may be conveyed or assigned to the Association by Declarant (including, but not limited to, such parts of the Common Areas as may now or hereafter be held by Declarant). Declarant shall convey the Common Areas to the Association free and clear of any liens and encumbrances prior to the sale of the last Lot.

**6.5 Conveyance or Encumbrance of Common Areas.** Except for any dedications required to be made to Yavapai County, the City of Sedona or any other governmental or quasi-governmental agency, and except in connection with minor adjustments to the boundaries of any Lots, Common Areas or other portions of the Property, which may be approved by the Board without submitting the same to the Members for approval, the Common Areas in any area of the Property shall not be mortgaged, transferred or dedicated without the prior written consent or affirmative vote of (i) Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members of the Association, and (ii) all Class B Members.

**6.6 The Association Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules shall be reasonable, shall not discriminate among Owners or Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with applicable law or the Property Documents. The Association Rules shall be intended to enhance the preservation and development of the Property and the Common Areas and may restrict and govern (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for any maintenance of Lots; (iii) the health, safety or welfare of the Owners and Occupants; or (iv) restrictions on the use of Lots. Upon adoption, the Association Rules shall have the same force and effect as if set forth herein and shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration. Sanctions for violation of the Association Rules or of this Declaration may be imposed by the Board and may include suspension of the right of a Lot Owner to vote and the right of an Owner to use the recreational facilities on the Common Areas, and may also include reasonable monetary fines. No suspension of a Lot Owner's right to vote or of the right of an Owner (or any Occupant of such Owner's Lot) or any guest or household member of such Owner or Occupant to use the recreational facilities on the Common Area due to a violation of the Association Rules may be for a period longer than sixty (60) days, except where such

Owner fails or refuses to cease or correct an ongoing violation or commits the same or another violation, in which event such suspension may be extended. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

**6.7 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 member or officer of the Association; provided, however, the limitations set forth in this Section 6.7 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

**6.9 Availability of Books, Records and Other Documents.** The Association shall maintain complete and current copies of this Declaration, the Articles, the Bylaws, the Association Rules and the Residential Design Guidelines and of the books, records and financial statements of the Association, and, upon the prior written request to the Association by any Owner or by any holder, insurer or guarantor of a First Mortgage, shall make the same available for inspection, at reasonable times and under reasonable circumstances, or for copying (for a reasonable copy charge) by such Owner or such holder, insurer or guarantor.

**6.10 Financial Statements.** If any holder, insurer or guarantor of a First Mortgage submits to the Association a written request for a copy of the financial statement of the Association for the most recently concluded fiscal year of the Association, the Association shall promptly deliver a copy of such a financial statement to such holder, insurer or guarantor. If no such financial statement for the most recently concluded fiscal year has yet been prepared, the Association shall cause the same to be prepared and deliver a copy to such holder, insurer or guarantor as soon as reasonably possible. The cost of having such a financial statement prepared shall be a Common Expense. The financial statements, books and records of the Association shall be audited or unaudited, as determined by the Board (subject to the requirements of applicable law).

## ARTICLE 7

### MEMBERSHIP AND VOTING RIGHTS

**7.1 Identity of Members; Power to Vote.** Every Owner of a Lot automatically shall be a Member of the Association and shall remain a Member for as long as such ownership continues. Each Owner's membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable. If any Lot is owned by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member but the membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall either: (a) make such designation, in which event such designation shall be binding for all purposes; or (b) declare that until all Persons who together hold such membership jointly make such written designation, the vote(s) attributable to such membership under this Declaration shall not be cast or counted on any questions before the Members; provided, however, that if any one of such Persons casts a vote representing a certain Lot without objection from any other Person sharing ownership of such Lot, the Person casting the vote will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot unless and until objection thereto is made to the Board, in writing. Notwithstanding the foregoing, as long as there is a Class B Member, no Class B Member shall at the same time be a Class A Member nor shall a Class B Member have any Class A votes, and the membership and number of votes of each Class B Member shall be determined in accordance with Subsection 7.2 (B).

### **7.2 Membership Voting Classes; Number of Votes.**

A. Class A Members. Class A Members are all Owners of Lots, except that until the conversion of the Class B Membership to a Class A membership as provided in Subsection 7.2 (B), Declarant shall be a Class B Member and not a Class A Member. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions of this Declaration, each Class A Member shall be entitled to one (1) vote for each Lot owned.

B. Class B Member. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. Declarant shall have the right, at any time and from time to time, to assign all or any part of its voting rights appurtenant to its Class B membership (as well as all or any other rights appurtenant thereto) to one or more Persons acquiring any part of the Property for development and sale. Further, Declarant shall have the right, at any time and from time to time, to designate an individual or individuals to exercise Declarant's voting rights (whether appurtenant to Class A or Class B membership); provided, however, that such designation shall not act as an assignment by

Declarant of its membership or voting rights hereunder. A Class B membership shall cease and be converted to Class A membership on the earliest of (i) the date on which the votes entitled to be cast by the Class A Members equals or exceeds the votes entitled to be cast by the votes of the Class B Member; (ii) the date which is seven (7) years after the Recording of this Declaration; or (iii) the date on which the Declarant notifies the Association in writing that it elects to convert its Class B membership to Class A membership.

**7.3 Right to Vote.** The Board shall not be required to recognize a change in the ownership of a Lot as being effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. The vote for each Member must be cast as a single unit. Split or fractional votes shall not be allowed. Any Owner of a Lot that is leased or that is subject to a valid, outstanding and Recorded executory agreement of sale may, in the lease, agreement of sale or other written instrument, assign the voting rights appurtenant to the Lot to the lessee thereof or to the purchaser thereof under such agreement of sale, as applicable, provided that a copy of the written assignment of such voting rights is furnished to the Secretary of the Association prior to any meeting at which such lessee or purchaser seeks to exercise such voting rights. The Board shall have the right to suspend the voting rights of any Owner for such period of time as the Owner is delinquent in the payment of any Annual Assessments and/or Special Assessments required to be paid by this Declaration.

**7.4 Members' Rights.** Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, the Residential Design Guidelines and any other rules and regulations adopted pursuant to any of the foregoing, including, but not limited to the right to enforce the terms and provisions set forth in this Declaration.

**7.5 Transfer of Membership.** Except as otherwise provided in this Declaration, the rights and obligations of a Class A Member can not and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot, and then only to the new owner of the Lot. Such transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make any other form of transfer shall be void. A permitted transfer of ownership to a Lot shall transfer the Membership right appurtenant to said Lot to the new Owner thereof. To satisfy the notice requirement set forth in Section 7.3 above, each purchaser of a Lot shall notify the Association of such purchase within ten (10) days after becoming the Owner of a Lot.

**7.6 Suspension of Voting Rights.** If any Owner fails to pay any Assessments or other amounts due to the Association under the Property Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Property Documents and such violation is not cured within fifteen (15) days after the Association

notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote and to use the Common Area until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Property Documents are corrected.

## **ARTICLE 8**

### **COVENANT FOR LOT ASSESSMENTS AND CREATION OF LIEN**

**8.1 Creation of Lot Assessment Right.** To provide funds to satisfy the Association's financial and other obligations and to create and maintain appropriate reserves, the Association is hereby granted the right of assessment against all Lots. Annual Assessments and Special Assessments shall be for Common Expenses and shall be allocated equally among all Lots, subject to the provisions of this Article 8.

**8.2 Covenants with Respect to Lot Assessments.**

A. The Declarant, for each Lot owned by Declarant, hereby covenants and agrees, and each Owner, by acceptance of his, her or its deed (or other conveyance instrument) with respect to a Lot, is hereby deemed to covenant and agree, to pay the Lot Assessments levied by the Association pursuant to this Declaration. All Lot Assessments shall be established and collected as provided in this Declaration.

B. The Lot Assessments, together with interest, late charges and all costs incurred by the Association in collecting or attempting to collect delinquent Lot Assessments, whether or not suit is filed, including but not limited to reasonable attorneys' fees, shall be a charge on a Lot and shall be a continuing lien upon the Lot against which each such Lot Assessment is made.

C. Each Lot Assessment, together with interest, late charges and all costs incurred by the Association in collecting or attempting to collect delinquent Lot Assessments, whether or not suit is filed, including but not limited to reasonable attorneys' fees, shall be the personal obligation of the Person who was the Owner of such Lot at the time such Lot Assessment arose; provided, however, that the personal obligation for delinquent Lot Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor (unless title is transferred to one or more such successors for purposes of avoiding payment of any Lot Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

D. No Owner shall be relieved of his, her or its obligation to pay Lot Assessments (or any other amounts owing by such Owner to the Association hereunder, all of which shall be deemed a part of the Lot Assessments) by abandoning or not using his, her or its Lot or the Common Areas, or by leasing or

otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, as evidenced by a Recorded instrument, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Lot Assessments is a separate and independent covenant on the part of each Owner.

E. No diminution or abatement of Lot Assessments or setoff shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under the Property Documents, or for inconvenience or discomfort arising from the making of repairs or Improvements that 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. Furthermore, nothing herein shall be interpreted to require or obligate Mortgagees to collect Lot Assessments from any Owner.

**8.3 Assessment Period.** The period for which the Annual Assessment is to be levied (the "**Assessment Period**") shall generally commence on March 1, and extend until the last day of February of the following year, except that the initial Assessment Period, and the obligation of Owners to pay Lot Assessments, shall commence upon the conveyance of the first Lot to a purchaser and terminate on the last day of February of such year, or if conveyed after such date, then the last day of February of the following year. The Annual Assessment for the initial Assessment Period shall be a pro-rated amount calculated on a per-day basis from the conveyance of the lot to the end of the Assessment Period. The Board may, in its sole discretion from time to time, change the Assessment Period.

**8.4 Commencement Date of Lot Assessment Obligation.** All Lots described in this Declaration shall be subject to assessment upon the conveyance of the first Lot to a purchaser.

**8.5 Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a yearly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Lot Assessments and for the billing and collection of Lot Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a Lot Assessment bill to a Member shall not relieve any Member of his liability for any Lot Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Lot Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**8.6 Evidence of Payment of Lot Assessments.** To the extent required by law, upon receipt of a written request from a First Mortgagee or other lienholder or from a Member or a Person designated by such Member, the Association shall issue (or cause to be issued), within the time period required by applicable law, a statement setting forth the amount of any unpaid Lot Assessment or other fee or charge against the Lot specified in the request. The Association may impose a reasonable charge for the issuance of such statements, which charge shall be payable at the time the request for any such statement is made. Any such statement, when duly issued as herein provided, shall be conclusive and binding on the Association with respect to any matters therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

**8.7 Annual Assessments.**

A. An Annual Assessment shall be assessed against all Lots, allocated on a prorata basis. The Annual Assessment shall be an amount reasonably estimated by the Board to produce income to the Association sufficient to cover the total budgeted Common Expenses taking into account other sources of funds available to the Association.

B. The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall neither affect the validity of the Annual Assessment established by the Board nor relieve any Owner of its obligation to pay any Annual Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and an Annual Assessment is levied by the Board for such Assessment Period, the amount of the Annual Assessment for the immediately preceding Assessment Period shall remain in effect. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Lot Assessments by Members, it may increase the Annual Assessment for that Assessment Period, and the revised Annual Assessment shall commence on the date designated by the Board.

**8.8 Special Assessments.** The Association may levy a Special Assessment against each Lot for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any Improvements on Areas of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment is approved by Members having more than two-thirds (2/3) of the votes in each Class of Membership entitled to be cast by Members present in person or by proxy at a meeting duly called for such purpose.

**8.9 Obligation of Declarant for Deficiencies.** As long as there is any Class B membership in the Association, Declarant shall pay and contribute to the Association,

within thirty (30) days after the end of each Assessment Period, or at such other times as may be requested by the Board, such funds (the "**Subsidy**") as may be necessary, when added to the Annual Assessments levied by the Association pursuant to this Declaration, to provide for:

- A. The operation and maintenance of the Common Areas and the recreational facilities located thereon;
- B. The maintenance of adequate reserves; and
- C. The performance by the Association of all other obligations of the Association under the Property Documents.

If Declarant is required to contribute a Subsidy for a given Assessment Period, Declarant shall have the right to increase the Annual Assessment for the subsequent Assessment Period to reimburse Declarant for such Subsidy. In no event shall the increase in the Annual Assessment for the subsequent Assessment Period exceed 20% of the prior year's Assessment without the approval of two-thirds (2/3) of the votes entitled to be cast by Class A Members of the Association, and all Class B Members.

**8.10 Effect of Nonpayment of Lot Assessments; Remedies of the Association.**

A. Any Lot Assessment or any installment of a Lot Assessment that is not paid within fifteen (15) days after the Lot Assessment or the installment of the Lot Assessment first became due (or such longer period of time as required by applicable law) shall be deemed delinquent and shall bear interest from the date on which such Lot Assessment or installment of the Lot Assessment became due at the greater of twelve percent (12%) per annum or the prevailing FHA or VA interest rate for new home loans. In addition, the Board may impose a late charge, not to exceed the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid Lot Assessment or installment thereof (but in no event an amount greater than permitted under applicable law), against any Owner who has not paid any Lot Assessment, or any installment thereof, within fifteen (15) days after such payment was due.

B. The Association shall have a lien ("**Assessment Lien**") on each Lot for: all (i) Lot Assessments levied against the Lot; (ii) interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) monetary penalties levied against the Owner of the Lot; (iv) attorney fees, court costs, title report fees, Recording costs, fees charged and costs incurred by any collection agency and any other fees or costs incurred by the Association in attempting to collect Lot Assessments or other amounts due to the Association by the Owner of a Lot; (v) amounts payable to the Association pursuant to Section 8.7 or Section 8.8 of this Declaration; and (vi) other amounts payable to the Association

pursuant to the Property Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a notice of lien ("**Notice of Lien**") that sets forth (a) the name of the delinquent Owner as shown in the records of the Association, (b) the street address of the Residential Unit on the Lot or the legal description of the Lot against which the Notice of Lien is Recorded and (c) the amount of the delinquent Lot Assessment, including interest, lien Recording fees and reasonable attorneys' fees, as of the date the Notice of Lien is Recorded. The Notice of Lien shall not be Recorded against a Lot before the Association has sent the defaulting Owner a written demand for payment of the delinquent Lot Assessment and all other amounts due to the Association by such Owner (the "**Payment Demand**"). The Payment Demand shall state (i) the date the Assessment became delinquent, (II) the amount of the delinquent Lot Assessment, and (III) any other amounts due to the Association by the Owner. Each default shall constitute a separate basis for a Payment Demand, but any number of defaults may be included within a single Payment Demand. If the delinquency is not paid by the Owner to the Association within ten (10) days after delivery of the Payment Demand to the Owner, the Association may Record the Notice of Lien against the Lot. If the Association Records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded an Assessment Lien fee in an amount to be set from time to time by the Board.

C. The Assessment Lien shall have priority over all other liens or claims against a Lot except for: (i) liens and encumbrances Recorded before the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any First Mortgage on the Lot, or as otherwise provided from time to time under applicable law. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale or through any equivalent proceedings (such as, but not limited to, the taking of a deed in lieu of foreclosure) shall acquire title to the Lot free and clear of any claims for unpaid Lot Assessments and charges against the Lot that became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Lot Assessments and charges against the Lot that accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot. Notwithstanding anything in this Declaration to the contrary, in no event shall any First Mortgagee be required to collect any Lot Assessments, and the failure of an Owner to pay Lot Assessments when due shall not constitute a default under an insured First Mortgage.

D. The Association shall not be obligated to release any portion of the Assessment Lien until all such delinquent Lot Assessments, interest, Assessment Lien fees, monetary penalties, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

E. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, Assessment Lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to: (i) bringing an action at law against the Owner personally obligated to pay the delinquent Lot Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Lot Assessments and (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a deed of trust. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

F. During the period any Lot is owned by the Association, no right to vote shall be exercised with respect to said Lot and no Lot Assessments shall be assessed or levied on or with respect to said Lot, provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Area.

G. The Association may maintain a suit to recover a money judgment for unpaid Lot Assessments, rent, interest and attorneys' fees and costs and other litigation related fees and costs without foreclosing or waiving the Assessment Lien securing same.

## ARTICLE 9

### ASSOCIATION FUNDS

**9.1 Purposes for Which Association's Funds May Be Used.** The Association shall use all funds and property collected and received by it (including Lot Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (i) discharging and performing its duties and obligations under the Property Documents; (ii) exercising the rights and powers granted to the Association by the Property Documents, and (iii) the common good and benefit of the Property and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Property. Notwithstanding any other provision of this Declaration to the contrary, as long as there is a Class B membership in the Association, funds of the Association may not be used for the initial construction of Improvements on the Common Areas.

**9.2 Surplus Funds.** The Association shall not be obligated in any year to spend all the funds 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 an Annual

Assessment in the succeeding year if surplus funds exist 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.

**9.3 Working Capital Fund.** To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each purchaser (other than the Declarant) of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot the then current Annual Assessment attributable to the Lot. Funds paid to the Association pursuant to this Section 9.3 may be used by the Association for payment of operating expenses or any other purpose permitted under the Property Documents. Payments made pursuant to this Section 9.3 shall be nonrefundable and shall not be considered as an advance payment of any Lot Assessments levied by the Association pursuant to this Declaration.

**9.4 Reserves.** Each budget adopted by the Board shall include reasonable amounts (as determined by the Board) to be collected as reserves for the future periodic maintenance, repair or replacement of all or any portion of the Common Areas. All amounts collected as reserves, whether pursuant to this Section 9.4 or otherwise, shall be deposited by the Board in a separate bank account (the "**Reserve Account**") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected. Withdrawal of funds from the Reserve Account shall require the signatures of either (a) two (2) members of the Board, or (b) one (1) member of the Board and an officer of the Association who is not also a member of the Board. The Board may obtain an initial reserve study ("**Reserve Study**") prior to the commencement of the initial Assessment Period and may have the Reserve Study updated at such intervals as it deems appropriate.

Provided that the Board acts in good faith in determining the amount to be collected as reserves, Declarant shall not be liable to the Association or any Member if the funds collected for reserves prove to be inadequate to pay for all required periodic maintenance, repair and replacement that was intended to be funded from reserves.

**9.5 Transfer Fee.** Each purchaser of a Lot (other than the Declarant) shall, immediately upon becoming the Owner of the Lot, pay to the Association or to its managing agent (if directed to do so by the Board) a transfer fee in such amount as is established from time to time by the Board.

## ARTICLE 10

### MAINTENANCE

**10.1 Areas of Association Responsibility.** The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, except for any part thereof that any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility, but all Areas of Association Responsibility, shall be maintained in good condition and repair at all times. No Owner, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility. The Association shall be responsible for the control, maintenance and payment of ad valorem taxes and liability insurance on the Common Areas.

**10.2 Lots.** Each Owner of a Lot shall be responsible for maintenance, cleaning, painting, repair or general care of the Owner's Lot and the Improvements thereon. All Improvements shall at all times be kept in good condition and repair in accordance with the Maintenance Standard. Once a certificate of occupancy is issued with respect to any Residential Unit or other Improvement on a Lot, the Owner must cause all grass, hedges, shrubs, vines and plants of any type that have been planted on the Owner's Lot to be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass that die shall be promptly removed and replaced with living foliage of like kind, unless different foliage or the elimination of such foliage is approved in writing by the Architectural Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property. Notwithstanding the above, if no Residential Unit or other Improvement has been constructed on a Lot, the Owner may leave the Lot in its natural state and merely must cause the Lot to be maintained in a weed-free, fire-hazard-free condition.

**10.3 Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility, or any Improvement situated thereon, is caused through the willful or negligent act of any Owner or Occupant or their respective family, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

**10.4 Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to not comply with the Maintenance Standard or as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Property that are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner that violates this Declaration; or in the event the Owner of any Lot is failing to perform any of his obligations under the Property Documents, the Board may make a finding to such effect, specifying the particular condition or conditions that exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the

expiration of said fourteen-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

### **10.5 Party Walls.**

A. Each wall or fence that is located immediately on the boundary line between two lots or between a Lot and Common Area shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section 10.5, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. If an Owner causes the construction of a wall entirely on such Owner's Lot, the Owner of any adjacent Lot may similarly cause the construction of a wall entirely on such adjacent Lot and neither of such walls shall be deemed a "party wall," but shall be deemed the property of the Owner on whose Lot the wall has been built.

B. For purposes of this Section 10.5 only, in the case of a wall between a Lot and Common Area, in interpreting the provisions of this Section 10.5 the Common Area bounded by such wall shall not be deemed to be a "Lot" and the Association shall not be deemed to be the "Owner" of such "Lot," but instead, the Owner of the Lot shall be deemed to be the Owner of the entirety of such wall, even if such wall may otherwise be deemed a "party wall" by virtue of its location immediately on or along the boundary line between the Lot and Common Area. If any such wall or portion thereof is wrought iron, the Owner of the Lot shall be responsible for the repair and maintenance of all sides of such wrought iron surface. If any such wall encroaches upon a Lot, an easement for such encroachment shall exist in favor of the Association.

C. The Owners and Occupants of contiguous Lots who have a party wall shall both equally have the right to use such wall. No Owner or Occupant of any Lot (or any family member, guest, invitee, employee or agent of such Owner or Occupant) shall do or permit any act (or omit to do any act) that might or does damage, destroy or impair the structural soundness or integrity of any party wall, or that would cause any party wall to be damaged by exposure to the elements. If any Owner or Occupant of a Lot (or any of their respective family member, guest, invitee, employee or agent) does or permits any such act (or so omits to do any act), such Owner's, or Occupant's liability with respect to such damage, destruction, impairment or exposure shall be determined in accordance with applicable law.

D. If any repair, maintenance or reconstruction of any party wall is necessary (other than due to the negligence or willful act or omission of the Owner, or Occupant of one Lot, or such Owner's or Occupant's family members, guests, invitees, employees or agents, in which event such costs shall be the sole responsibility of the Owner or Occupant), the cost thereof shall be borne equally by

the Owners and/or Occupants of the Lots sharing such party wall. If any Owner or Occupant fails or refuses timely to pay such Owner's or Occupant's share of such cost, the other Owner or Occupant shall have the right to pay such cost in full and recover from the other Owner or Occupant such Owner's or Occupant's share of such cost (together with interest as provided in Section 8.2). Notwithstanding the foregoing, if an Owner or Occupant elects to paint and/or stucco the side of the party wall that faces his Lot, that Owner or Occupant shall be solely responsible for the cost thereof.

E. If any party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners or Occupants (or their family members, guests, invitees, employees or agents), including ordinary wear and tear and deterioration from lapse of time, it shall be the obligation of all adjoining Owners and Occupants, at their joint and equal expense, to rebuild and repair the party wall to a condition comparable to the condition in which it existed prior to such damage or destruction.

F. The right of any Owner to contribution from any other Owner under this Section 10.5 shall be appurtenant to the Owner's Lot and shall pass to such Owner's successors in title.

G. No Owner or Occupant shall alter or modify a party wall in any respect that affects the portion of the party wall on the adjacent Lot without having first obtained the written consent of the Owner of the other Lot; provided, however, that such consent is not required for repair or restoration of the party wall if the damage or destruction was caused by the negligence or willful act or omission of the Owner or Occupant of such adjacent Lot and such Owner or Occupant fails or refuses to repair or restore the party wall promptly upon the request of the other Owner or Occupant. Any consent required by this Section 10.5 shall be in addition to and not in substitution for the consents or approvals required from the Architectural Review Committee under this Declaration or from any municipal or other governmental body having jurisdiction over the Property and compliance with applicable building codes or similar regulations or ordinances.

H. If any party wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the party wall shall and does exist in favor of the Owners and Occupants of the Lots that share such party wall.

**10.6 Maintenance of Walls Other Than Party Walls.** Walls (other than party walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot. Any wall that is placed on the boundary line between a Common Area and a public right-of-way or any other property dedicated to the public shall be maintained, repaired and replaced by the Association.

**10.7 Landscaping.** Within ninety (90) days after the issuance of a Certificate of Occupancy for a Residence, if the Lot has not already been landscaped by Declarant, the purchaser (referred to in this Section 10.7 as "Owner") shall have completed the landscape the portion of such Lot lying between the front or side boundaries of the Lot and the exterior walls of the Residential Unit situated on the Lot (except for any side or back yard that is completely enclosed by a wall or fence) (the "**Front Yard Landscaping**"). Each Owner shall maintain the Front Yard Landscaping on such Owner's Lot and shall keep the Front Yard Landscaping free of debris and weeds at all times and promptly repair portions of the Front Yard Landscaping that become damaged. Each Owner shall maintain the Front Yard Landscaping and exterior of the Owner's Residential Unit in accordance with the Maintenance Standard. If any Owner fails to perform the obligations provided in this Section 10.7, the Association may, at the discretion of the Board, perform such obligations at the expense of such Owner, and the amount of the expense, together with attorneys' fees, costs and other litigation fees and costs, plus any interest as provided in Section 8.2, shall be secured by the Association Lien on such Owner's Lot established by Section 8.10. The provisions of this Section 10.7 shall not apply to any portion of the Property owned by Declarant. Notwithstanding the foregoing sentence, any Declarant or Owner owning a Lot or any other portion of the Property, whether improved or not, shall maintain such Lot or portion of the Property free of debris and weeds at all times and promptly repair portions thereof which may have been damaged.

## ARTICLE 11

### INSURANCE

#### **11.1 Insurance to be Obtained by the Association.**

A. Liability Insurance. The Association, shall obtain and maintain at all times a comprehensive general liability policy insuring the Association, each member of the Board, each Owner and each Declarant Designee (as defined below), against any liability to the public or to any Owner or Occupant (and their invitees, agents, employees, tenants, guests, servants and household members) for death, bodily injury and property damage arising out of or incident to the ownership or use of the Common Areas or arising out of or incident to the performance by the Association of its maintenance and other obligations hereunder. The Board, with the assistance of the insurer(s) providing such coverage, shall review annually the amounts of coverage afforded by said comprehensive general liability policy or policies and adjust such amounts of coverage as the Board deems appropriate, but in no event shall said policy or policies provide coverage less than \$1,000,000 for death, bodily injury and property damage for any single occurrence or less than a \$2,000,000 aggregate. The policy or policies providing such insurance shall, by specific endorsement or otherwise, preclude denial by the insurer(s) providing such insurance of a claim under such policy or policies because of negligent acts or omissions of the Association, any Owner, the Declarant or Declarant Designee, or any other Person named as an insured or additional insured thereunder. The term

"**Declarant Designee**" shall mean (i) Declarant and (ii) as long as Declarant, any affiliate of Declarant, or any Person with whom Declarant or an affiliate of Declarant contracts directly for the performance of all or a substantial portion of Declarant's rights and obligations hereunder or for the construction of substantial Improvements related to the Property, retains an interest in any Lot, such affiliate and such other Person, if identified by Declarant to the Association, provided that any added premium cost or other expense resulting from naming any Declarant Designee as an insured shall be borne by such Declarant Designee.

B. Director and Officer Insurance. The Association shall obtain and maintain director and officer liability insurance ("**D&O Insurance**") in an amount not less than \$1,000,000 covering all directors and officers of the Association against claims arising out of or in connection with the administration of the Association.

C. Fidelity Bonds. In addition to the D&O Insurance, if the Association is controlled by other than the Declarant or a Declarant Designee, the Association shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of officers, directors and employees of the Association and all others who handle, or are responsible for handling, funds held or administered by the Association, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Association. In addition, the Board shall have the right, power and authority, at its reasonable discretion, to obtain and maintain fidelity bond coverage with respect to the activities of any independent management agent who handles funds for the Association and of the officers, directors and employees of such agent (separate and apart from any fidelity bond or similar coverage such agent may itself maintain).

Each fidelity bond: (a) shall name the Association as obligee; (b) shall be issued by one or more companies authorized to issue such bonds in the State of Arizona; (c) in the case of fidelity bond coverage with respect to the Association and its officers, directors, employees and the like, shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Board to be in the custody of the Association at any time while such bond is in force, but in no event shall the amount of such fidelity bond coverage be less than the sum of three (3) months' Annual Assessments on all Lots, plus the total of funds held in the Association's reserves; and (d) in the case of fidelity bond coverage obtained by the Association, at the Board's discretion, with respect to the activities of any independent management agent (or the directors, officers or employees of such agent), shall be in such amount as the Board reasonably deems appropriate. Each fidelity bond shall provide that the issuer thereof shall endeavor to provide not less than ten (10) days prior written notice to the Association and to each Mortgagee who shall have previously given such insurer written notice of such Mortgagee's interest in a Lot (the notice must include the name and address of such Mortgagee), of any cancellation, refusal to renew or material modification of such policy.

D. General Provisions Governing Insurance. Nothing contained herein regarding the insurance policies that the Association must maintain shall be deemed to preclude the Board from electing to acquire additional insurance insuring against other risks from those set forth herein. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) any insurance trust agreement shall be recognized; (ii) the insurer shall waive any right of subrogation against the Owners, the Board, the Association, and their respective agents, tenants, servants, employees, guests and household members such that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their households; (iii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) such insurance shall not be canceled, invalidated or suspended by reason of any acts or omissions of any Owner or Occupant (or their respective invitees, agents, tenants, servants, employees, guests or household members), or of any member, officer or employee of the Board without first providing a written demand to the Board that any such act or omission be cured and providing a sixty (60) day period within which the Board may cure such act or omission (or cause the same to be cured); (iv) such insurance coverage shall be primary, and shall in no event be brought into contribution with any insurance maintained by individual Owners or Occupants or their Mortgagees or by other lien holders; (v) the coverage afforded by such policy or policies shall not be prejudiced by any act or omission of any Owner or Occupant (or their agents) when such act or omission is not within the control of the Association.; (vi) a "severability of interest" endorsement that shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; and (vii) for policies of hazard insurance, a standard Mortgagee clause providing that the insurance carrier shall notify the First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

E. Cost of Insurance. All premiums for the insurance or bonds obtained by the Board shall be Common Expenses (except that any added premium cost of naming any Declarant Designee as an insured shall be borne by such Declarant Designee). The Board shall not be liable for failure to obtain or maintain any of the insurance coverage required by this Section 11.1, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona, or if such insurance is available only at an unreasonable cost.

## **11.2 Insurance to be Obtained by Owners or Occupants.**

A. Public Liability Insurance. Each Owner or Occupant shall be responsible, at such Owner's or Occupant's sole expense, for obtaining such comprehensive public liability insurance as such Owner or Occupant may desire or deem necessary against loss or liability for damages and any expense of defending against any claim for damages that might result from the ownership, use or occupancy of a Lot owned or occupied by such Owner or Occupant.

B. Hazard and Contents Insurance. Each Owner or Occupant shall be responsible, at such Owner's or Occupant's sole expense, for obtaining such fire, liability, theft and any other insurance as such Owner or Occupant may desire or deem necessary covering: (a) any Residential Unit and any other Improvement on the Lot owned or occupied by such Owner or Occupant and (b) any and all fixtures and personal property upon such Lot or in such Residential Unit or other Improvement.

**11.3 Certificates of Insurance.** An insurer that has issued an insurance policy under this Article 11 shall issue a certificate or a memorandum of insurance to the Association or the Owner or Occupant (as applicable) and, upon request, to any Mortgagee. Any insurance obtained pursuant to this Article 11 may not be canceled until written notice of the proposed cancellation has been mailed to the Association or to the Owner or Occupant (as applicable) and each Mortgagee to whom a certificate of insurance has previously been issued.

## **ARTICLE 12**

### **CLAIMS AGAINST DECLARANT**

**12.1 Dispute Notification and Resolution Procedure.** All actions or claims (i) by the Association against the Declarant, (ii) by any Owner(s) against the Declarant (other than claims under the limited warranty provided by Declarant to a purchaser, if any, (the "**Limited Warranty**") to the extent applicable), or (iii) by both the Association and any Owner(s) (other than claims under the Limited Warranty to the extent applicable) against the Declarant, relating to or arising out of the Property, including the Declaration or any other Property Documents, the use or condition of the Property or the design or construction of or any condition on or affecting the Property, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Residential Units) or disputes that allege negligence or other tortuous conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Property or any Improvements (individually, a "**Dispute**," and collectively, "**Disputes**") shall be subject to the provisions of this Article 12. Declarant and each Owner acknowledge that the provisions set forth in this Article 12 shall be binding upon current and future Owners of the Property and upon the Association, whether acting for itself or on

behalf of any Owner(s). Nothing in this Declaration is intended to limit, expand or otherwise modify the terms of the Limited Warranty, and claims under the Limited Warranty will, subject to the terms of the Limited Warranty, be arbitrated in accordance with the arbitration provisions set forth in the Limited Warranty (to the extent applicable).

A. Notice. Any Person (including the Association) with a Dispute claim shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "**Claim Notice**").

B. Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Property to discuss the claim. At such meeting or at such other mutually agreeable time, the Declarant and the Declarant's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant (provided that Declarant shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Section 12.1. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Property and the property that is the subject of the claim to take and complete corrective action.

C. No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in Section 12.1 shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Property for which Declarant is not otherwise obligated under applicable law or the Limited Warranty (if applicable). The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing executed and Recorded by Declarant.

D. Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Subsection 12.1(B) above, the matter shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (except as such procedures are modified by the provisions of this Subsection 12.1(D)) or such other mediation service selected by Declarant. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. 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. No litigation or other action shall be commenced against the Declarant without complying with the procedures described in this Subsection 12.1(D).

1. Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference, and all parties shall be required to attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Property is located or such other place as is mutually acceptable by the parties.

2. 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, consistent with the Construction Industry Mediation Rules of the American Arbitration Association. The mediator is authorized to conduct joint and separate meetings with the parties 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 agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

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

4. Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Notwithstanding the foregoing, applicable subcontractors and material suppliers designated by Declarant may attend mediation sessions and may be made parties to the mediation. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

5. Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including 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 unless they agree otherwise.

E. Arbitration. If mediation pursuant to Subsection 12.1(D) is not successful in resolving any Dispute, such claim or dispute shall be resolved by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Subsection 12.1(E). The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subcontractors, material suppliers and other parties whose participation is reasonably necessary to afford complete relief in arbitration or who are involved in common questions of law or fact shall be included as parties in the arbitration. Subject to the limitations imposed in this Subsection 12.1(E), the arbitrator shall have the authority to try all issues, whether of fact or law.

1. Place. The proceeding shall be heard in the county in which the Property is located.

2. Arbitrator. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the American Arbitration Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Property. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the demand for arbitration on all respondents named therein.

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

4. Pre-Hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

5. Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including destructive or invasive testing; and (vi) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Subsection 12.1(B) 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. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

6. 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.

7. Arbitration Award. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §12-1501, et seq., such similar laws governing enforcement of awards in a trial court as are applicable in the jurisdiction in which the arbitration is held, or, as applicable, pursuant to the Federal Arbitration Act (Title 9 of the United States Code).

F. WAIVERS. NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROPERTY, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 12 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 12. THE ASSOCIATION, EACH OWNER, THE DECLARANT ACKNOWLEDGES THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE 12, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER, AND THE DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROPERTY, EACH OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

G. Statutes of Limitation. Nothing in this Article 12 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

H. Required Consent of Declarant to Modify. This Article 12 may not be amended except in accordance with Section 13.8 of this Declaration and with the express written consent of the Declarant.

**12.2 Required Consent of Owners for Legal Action.** Any action or claim instituted by the Association (which action or claim shall be subject to the terms of this Article 12) against the Declarant, relating to or arising out of the Property, including the Declaration or any other Property Documents, the use or condition of the Property or the design or construction of or any condition on or affecting the Property, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Residential Units) or disputes that allege negligence or other

tortuous conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Property or any Improvements, shall have first been approved by Owners representing seventy-five percent (75%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose.

A. Notice to Owners.

1. Prior to obtaining the consent of the Owners in accordance with this Section 12.2, the Association must provide written notice to all Owners that notice shall (at a minimum) include (1) a description of the nature of any action or claim (the "**Claim**"), (2) a description of the attempts of Declarant to correct such Claim and the opportunities provided to Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Declarant and a description of the relationship between such attorney and member(s) of the Board of Directors (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against Declarant and the source of the funds that will be used to pay such fees and expenses, (8) when the statute of limitations affecting the right of the Association to bring an action for the Claim will expire, (9) the estimated time necessary to conclude the action against Declarant, (10) an affirmative statement from the Board that the action is in the best interests of the Association and its Members, and (11) a proposed plan that describes the manner in which any proceeds obtained by the Association as a result of the action for the Claim, whether by way of judgment, settlement or other means, have been or will be allocated (the "**Recovery Plan**"). Any material changes to the Recovery Plan must be provided to Members within thirty (30) days of making the change.

2. If the Association recovers any funds from Declarant (or any other person or entity) as a result of an action instituted for a Claim, the Board of Directors shall provide the final version of the Recovery Plan to the Members.

B. Notification to Prospective Purchasers. If the Association commences any action for a Claim, all Owners must notify prospective purchasers of such action and must provide such prospective purchasers with a copy of all notices, documents and other materials received from the Association under this Section 12.2.

## ARTICLE 13

### GENERAL PROVISIONS

**13.1 Term.** The covenants, conditions and restrictions of this Declaration: (a) shall run with and bind the Property in perpetuity unless earlier terminated; and (b) shall inure to the benefit of and shall be enforceable by the Association or by the Owner of any Lot, or portion of the Property subject to this Declaration and their respective legal representatives, heirs, successors and assigns.

**13.2 Termination.** This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Owners representing ninety percent (90%) or more of the votes in each class of Membership and by the holders of First Mortgages, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in the Articles.

**13.3 Enforcement.** The Association or any Owner shall have the right to enforce the Property Documents in any manner provided for in the Property Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Property Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Property Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Property Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Property Documents or in any other manner arising out of the Property Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees and other costs incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Property Documents or at law or in equity, the Board shall have the power to levy reasonable monetary penalties against an Owner for a violation of the Property Documents by the Owner or by any Occupant, provided the Owner is given notice and an opportunity to be heard.

**13.4 Notice of Violation.** The Association shall have the right to Record against a Lot a written notice of a violation ("**Violation Notice**") with respect to any violation of the Property Documents by the Owner or Occupant of the Lot. The Violation Notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or Occupant violating, or responsible for the violation of, the Property Documents; (ii) the street address of the Residential Unit on a Lot

or the legal description of the Lot against which the Violation Notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the Violation Notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps that must be taken by the Owner or Occupant to cure the violation. Recordation of a Violation Notice shall serve as notice to the Owner and Occupant, and any subsequent purchaser of the Lot, that there is such a violation. If, after the Recording of such Violation Notice, it is determined by the Association that the violation referred to in the Violation Notice does not exist or has been cured, the Association shall Record a revocation of the Violation Notice that shall state (a) the street address of the Residential Unit on the Lot or the legal description of the Lot against which the Violation Notice was Recorded, (b) the Recording data for the Violation Notice, and (c) that the violation referred to in the Violation Notice did not exist or has been cured. Failure by the Association to Record a Violation Notice shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Property Documents.

**13.5 Limitation on Declarant's Liability.** Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting any interest in any portion of the Property and becoming an Owner, acknowledges and agrees that Declarant shall have no personal liability to the Association, or any Owner, Member or any other Person, arising under, in connection with, or resulting from (including, without limitation, resulting from action or failure to act with respect to) this Declaration or the Association except to the extent of its interest in the Property and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets or be a lien upon such other assets of the judgment debtor.

**13.6 No Absolute Liability.** No provision of the Property Documents shall be interpreted or construed as imposing on Owners or other Persons absolute liability for damage to the Common Areas. Owners shall only be responsible for damage to the Common Areas caused by the negligence or intentional acts of such Owners or other Persons.

**13.7 Rights of First Mortgagees.**

A. Any First Mortgagee, upon written request to the Association, will be entitled to: (i) inspect and copy the books and records of the Association during normal business hours; (ii) receive, within ninety (90) days following the end of any calendar year, a copy of the financial statement of the Association for the immediately preceding calendar year; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. Any First Mortgagee requesting copies of books and records or financial statements shall reimburse the Association for the reasonable copying charges therefor.

B. In addition to the other restrictions set forth in this Declaration, no Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

C. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the Declarant) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

1. Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection;

2. Change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner; or

3. Change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Areas.

D. No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of any Common Area.

E. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

F. If there is any conflict or inconsistency between the provisions of this Section and any other provision of the Property Documents, the provisions of this Section shall prevail; provided, however, that if there is any conflict or inconsistency between the provisions of this Section and any other provisions of the Property Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Property, or (iii) certain actions of the Association as specified in Subsection 13.7(C) of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided further, however, that the Declarant, as long as the Declarant owns any Lot, and thereafter, the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the

Bylaws to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, FHA, VA or any federal, state or local governmental agency whose approval of the Property, the Plat or the Property Documents is required or requested by the Declarant, or the Board.

### **13.8 Amendments.**

A. Except for amendments made pursuant to this Subsection 13.8(B) of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than two-thirds (2/3) of the total votes in the Association.

B. The Declarant, as long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration, without obtaining the approval or consent of any Owner or First Mortgagee, to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, FHA, VA or any federal, state or local governmental agency whose approval of the Property or the Property Documents is required by law or requested by the Declarant or the Board.

C. As long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

D. The Declarant, as long as the Declarant is a Member of the Association, and thereafter, the Board, may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in the Declaration.

E. As long as the Declarant holds more than two-thirds (2/3) of the votes in the Association, any amendment to this Declaration shall be signed by the Declarant and Recorded. At any time the Declarant does not hold at least two-thirds (2/3) of the votes in the Association, any amendment approved pursuant to Subsection 13.8(A) of this Declaration or by the Board pursuant to Subsection 13.8(B) of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 13.8(B) of this Declaration shall be signed by the Declarant and Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

**13.9 Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive

and binding as to all persons and property benefited or bound by this Declaration. If there is any conflict between this Declaration and the Articles, Bylaws, Association Rules or Residential Design Guidelines, this Declaration shall control. If there is any conflict between the Articles and the Bylaws, the Articles shall control. If there is any conflict between the Bylaws and the Association Rules or Residential Design Guidelines, the Bylaws shall control.

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

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

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

**13.13 Laws, Ordinances and Regulations.**

A. The provisions of this Declaration shall be construed and interpreted with reference to the laws of the State of Arizona. References in this Declaration to Articles, Sections and Subsections shall be deemed to be references to the specified Articles, Sections and Subsection of this Declaration (unless otherwise specifically stated), whether or not phrases such as "of this Declaration," "hereof" or "herein" are used in connection with such references.

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

C. Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any portion of 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.

**13.14 Exhibits.** Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

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

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

**13.17 References to This Declaration in Deeds.** Deeds to and instruments affecting any Lot, Common Area or any other part of the Property may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee in such deed as Owner or any other Person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

DECLARANT: Sedona Stars, LLC  
An Arizona limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  )ss.  
County of                    )

On this \_\_\_\_ day of February, 2006, before me, \_\_\_\_\_, a Notary Public, personally appeared, Kenneth Schroeder, the Manager of Sedona Stars, L.L.C., an Arizona limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**