

RECORDED, RETURN TO:

Cornerstone Sienna Estates, LLC  
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(Attention: P. Klassen)

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
RESERVATIONS AND EASEMENTS  
FOR  
SIENNA ESTATES**

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, RESERVATIONS AND EASEMENTS  
FOR  
SIENNA ESTATES**

THIS DECLARATION of Covenants, Conditions, Restrictions, Reservations and Easements for (the "Declaration") is made as of the 23<sup>rd</sup> day of August, 2006, by CORNERSTONE SIENNA ESTATES, LLC, an Arizona limited liability company ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property situated in the County of Maricopa, State of Arizona, as described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. Declarant desires to develop the Property for single family residential use with such common areas as may from time to time be designated pursuant hereto.

C. Declarant desires to form, or has formed, a nonprofit corporation for the purpose of acquiring, constructing, operating, managing and maintaining any common areas on the Property, establishing, levying, collecting and dispersing the assessments and other charges imposed hereunder, and administering and enforcing this Declaration and enforcing the use and other restrictions imposed on various parts of the Property.

D. Declarant desires to subject the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth in order to establish a general scheme for the development, sale, use and enjoyment of the Property for the purpose of enhancing and protecting the value, desirability and quality of life within the Property.

NOW, THEREFORE, Declarant hereby declares as follows:

**ARTICLE 1  
DEFINITIONS**

The following words, phrases or terms used in this Declaration shall have the following meanings:

(a) "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

(b) "Assessable Property" shall mean any Lot included within the Property, except such part or parts thereof as may from time to time constitute Exempt Property.



(c) "Assessment" shall mean a Regular Assessment, Special Assessment, Capital Reserve Assessment, Maintenance Charge, plan review fee or any other fee or charge levied pursuant hereto.

(d) "Assessment Lien" shall mean the lien created and imposed by Article 8.

(e) "Association" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated. It is the present intent of the Declarant that the Association shall be referred to as the "**Sienna Estates Homeowners Association**." Declarant, however, shall be entitled to name the Association as it deems appropriate.

(f) "Association Rules" shall have the meaning set forth in Section 6.3 hereof.

(g) "Board" shall mean the Board of Directors of the Association.

(h) "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

(i) "Capital Reserve Assessment" shall mean any Assessment levied and assessed pursuant to Section 8.4 hereof.

(j) "Common Area" and "Common Areas" shall mean all real property and the improvements or amenities thereon, owned, controlled or operated by the Association (including without limitation areas used for landscaping, drainage, flood control, open areas and the like), or other rights running to the benefit of the Association and intended for the use and enjoyment of the Owners and/or Residents of the Property, or with respect to which the Association has administrative, maintenance or other similar responsibilities.

(k) "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

(l) "Declarant" shall mean and refer to the above recited Declarant or any person or entity to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned. The Declarant's rights shall only be assigned by a written, Recorded instrument executed by Declarant expressly assigning those rights.

(m) "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Reservations and Easements, as amended or supplemented from time to time.

(n) "Deed" shall mean a Deed or other instrument conveying the fee simple title in a Lot.

(o) "Design Review Committee" shall mean the committee of the Association to be created pursuant to Article 12 hereof.

(p) "Design Review Guidelines" shall mean those guidelines established by the Declarant pursuant to Section 12.1 hereof and as otherwise established by Declarant or the Design Review Committee from time to time.

(q) "Driveway Easement" shall mean an easement as described in Section 4.5 hereof.

(r) "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

(s) "Exempt Property" shall mean the following parts of the Property:

(i) All land and improvements owned by or dedicated to and accepted by the United States of America, the State of Arizona, Maricopa County, or any other political subdivision, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective; and

(ii) All Common Areas, for as long as the Association is the owner thereof.

(t) "Lot" shall mean any area of real property within the Property designated as a Lot on the Plat Recorded by Declarant. As used herein, "Lot" shall include the improvements on a Lot.

(u) "Maintenance Charges" shall mean any and all costs assessed pursuant to Article 11 hereof.

(v) "Member" shall mean any person holding a Membership in the Association pursuant to this Declaration.

(w) "Membership" shall mean a Membership in the Association and the rights granted to the Owners and Declarant pursuant to Article 7 hereof to participate in the Association.

(x) "Occupant" shall mean any person temporarily occupying any Dwelling Unit with the permission of the Declarant or Owner thereof.

(y) "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot, but excluding the Declarant and those who hold such title merely as security for the performance of an obligation. In the case of a Lot, the fee simple title to which is vested of record in a seller under a valid and outstanding Agreement or Contract of Sale, as defined in A.R.S. §33-741, legal title shall be deemed to be in the purchaser upon close of escrow under such Agreement or Contract of Sale. In the case of a Lot, the fee simple title to which is vested of record in a trustee pursuant to A.R.S. §33-801, et seq., legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided fee interest in any Lot. The rights and obligations of Declarant as Owner of a Lot shall be separately set out herein.

(z) "Plat" shall mean and refer to the final plat of the Property, as recorded in Book 837 of Maps, page 19, Official Records of Maricopa County, Arizona.

(aa) "Property" and "Sienna Estates" shall mean the real property located in Maricopa County, Arizona, described in Exhibit "A" attached hereto and incorporated herein.

(bb) "Recording" or "Recordation" shall mean placing an instrument of public record in the Office of the County Recorder of Maricopa County, Arizona, and "Recorded" shall mean having been so placed of public record.

(cc) "Regular Assessment" shall mean the charge levied and assessed each year against each Membership pursuant to Section 8.2 hereof.

(dd) "Resident" shall mean:

(i) Each Occupant actually residing on any part of the Assessable Property; and

(ii) Members of the immediate family of each Owner or Occupant actually living in the same household with such Owner or Occupant.

Subject to such rules and regulations as the Association may hereafter specify, the term "Resident" also shall include the guests or invitees of any such Owner or Occupant to the extent necessary to enforce the provisions hereof.

(ee) "Single Family" shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

(ff) "Special Assessment" shall mean any Assessment levied and assessed pursuant to Section 8.3 hereof.

(gg) "Transfer Fee" shall mean a transfer fee imposed by the Board pursuant to Section 8.4 hereof.

(hh) "Use and Benefit Easements" shall mean the easement described in Section 4.4 hereof.

(ii) "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on the same plane as the object being viewed at a distance of fifty (50) feet or less from the nearest boundary of the Property being viewed.

## ARTICLE 2 PROPERTY SUBJECT TO THE DECLARATION

Section 2.1 General Declaration Creating Sienna Estates. Declarant intends to develop the Property generally in accordance with the Plat and to construct houses and sell and convey the Lots thereof. Declarant hereby declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that any property owned by or dedicated to a governmental agency or the public shall not be subject to this Declaration while owned by any such governmental entity or the public, except that any restrictions imposed in this Declaration upon the Owners and Residents concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. This Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Residents of the Property and their successors in interest.

Section 2.2 Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of residential Lots, residential houses, and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and Dwelling Units constructed on the Lots and the Property established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Property whatever is necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or any builder specifically authorized by Declarant or its representatives from erecting, constructing and maintaining, on any part of the Property, such structures as may be reasonable or necessary for the conduct of its business of completing said work and establishing the Property as a residential community and disposing of the same by sale, lease or otherwise; or

(c) Prevent Declarant or any builder specifically authorized by Declarant from maintaining such sign or signs on any of the Property as may be reasonable or necessary for the sale, lease or disposition thereof, including, but not limited to, such sign or signs as may be required or requested by any institution(s) providing financing to Declarant.

Nothing in this Declaration shall be construed to prevent Declarant from modifying the Plat or any portion thereof.

Section 2.3 Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

Section 2.4 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that the Property is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to a Lot agrees that Declarant shall have no liability with respect thereto.

### ARTICLE 3

#### EASEMENTS OF ASSOCIATION AND DECLARANT

3.1 Landscape and Monument Sign Easement. There is hereby created in favor of Declarant and the Association, a non-exclusive easement for ingress, egress, installation, replacement, repair and maintenance of landscaping, sidewalks, bicycle paths, perimeter walls, monument signs and utilities upon, over and across (a) an area approximately 10 feet in width on each side of the collector streets within the Property, and (b) an area approximately 20 feet in width on each side of the arterial streets within the Property. If the reasonable use of such easement area so requires, the Association shall have the right of ingress and egress upon, over, under and across that portion of each Lot which is immediately adjacent to said easement area for the purpose of exercising the rights and obligations of the Association with respect to the Common Areas.

Declarant and the Association shall have the right but not the obligation to install landscaping, sidewalks, bicycle paths, perimeter walls, monument signs and utilities within the easement created by this Section. The Owners of the Lots that are subject to this easement shall have the obligation, at their own cost and expense, to landscape and maintain the portions of their Lots within the easement areas that are not landscaped and maintained by the Declarant or Association.

3.2 Temporary Sign Easement. There is hereby created for the benefit of Declarant and its agents a temporary easement upon and across those portions of the Common Areas adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs which identify parties building upon or developing portions of the Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon all portions of the Property, but in no event later than twenty (20) years after the date this Declaration is recorded.

3.3 Easement for Common Area Maintenance. The Association shall have an easement upon, over, under and across all Lots and other areas of the Property for the purpose of (a) repairing, maintaining and replacing the Common Areas and all improvements thereon, and (b) performing all other rights, duties and obligations of the Association under this Declaration.

3.4 Encroachment Easement. If any portion of the Common Area or any improvement constructed thereon shall actually encroach upon any Lot, whether such encroachment results from the initial construction or from subsequent repair, reconstruction, settlement or shifting, there shall be deemed to be an easement in favor of the Association on such Lot for ingress and egress to, and the operation, maintenance, repair and replacement of the encroachment so long as the same shall exist. The Association shall at all times have the right to maintain any Common Area now existing or hereafter constructed, regardless of any encroachment of any such Common Area upon any Lot.

3.5 Right of Entry for Inspection. The Design Review Committee and the Association and their employees and agents shall have the right of access to all portions of the Property (except the interior of any completed Dwelling Unit) to inspect the same, to check for, remove or cure (including, without limitation by performing in lieu of, but at the expense of, the defaulting party) violations therein under this Declaration, the Design Review Guidelines, or the Association Rules, and to effect maintenance or repairs of improvements (including without limitation of any utility facilities) contained therein or elsewhere; provided however, that such right shall be exercised in a reasonable manner and at reasonable times and with prior written notification (unless emergency situations make written notification unreasonably burdensome under the circumstances) to the Owner of such portion of the Property. The requirement of written notification for routine access may be satisfied by a standard, published maintenance schedule.

3.6 Declarant's Easement and Rights. There is hereby created for Declarant and its agents, successors and assigns, upon, across, in, over and under the Common Areas as the same may from time to time exist and such of the Property on which development and construction of improvements and sales of such improvements has not been completed, easements for access,

improvement, use, development, construction, dirt removal and placement, exhibit and sale purposes in connection with the improvement, development and sale of the Property. Declarant and its activities (including but not limited to construction of any improvement or performance of any work) shall be exempt from the design control provisions of **Article 5** hereof and the restrictions of **Section 5.1(b)** hereof. Declarant specifically reserves the right to delegate, assign, share or grant from time to time all or any part of the rights, privileges or authority reserved to Declarant under this Declaration or all or any part of the exemptions granted to Declarant from provisions of this Declaration, upon such conditions or subject to such restrictions as Declarant shall deem appropriate, to any one or more grantees, all or any of which may mutually hold such rights, privileges, authority or exemptions concurrently with and not to the exclusion of each other and Declarant.

#### ARTICLE 4

##### EASEMENTS AND RIGHTS OF ENJOYMENT OF OWNERS

Section 4.1 Easements of Enjoyment. Declarant and every Owner, Occupant and Resident of the Property shall have a right and easement of enjoyment in and to all of the Common Areas which easement shall be appurtenant to, and shall pass with, the title to every Lot subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of the Common Areas by any Member for the following:

(i) for any period during which an Assessment remains delinquent;

(ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, the Association Rules or the Design Review Guidelines; or,

(iii) for successive 60-day periods if any such infraction is not corrected during any preceding suspension period period during which any Assessment against his Lot remains delinquent and remains unpaid after written notice of such failure to make payment is given by the Board to the defaulting Member.

(b) The right of the Association to regulate the use of the Common Areas through the Association Rules, including the right to charge reasonable fees for the use of facilities and to limit the number of guests using the Common Areas, and to prohibit access to those Common Areas (such as landscaped rights-of-way and water retention and drainage areas) not intended for use by Owners. The Association Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof, and otherwise shall serve to promote the best interests of Declarant, Owners, Occupants and Residents of the Property.

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or quasi-public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or other agreements with applicable governing municipalities or quasi-governmental agencies, entities or districts effective prior to the date hereof or specified on the Plat, no such dedication or transfer shall be effective unless an instrument signed by Declarant and the Owners of two-thirds (2/3) of the Memberships in each class of Members agreeing to such dedication or transfer has been Recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities easements and rights-of-way which are intended to benefit the Property and which do not have any substantial adverse effect on the enjoyment of the Common Areas by the Members.

(d) The right of the Association to change the use of the Common Areas in accordance with this Declaration.

(e) The right of the Association to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common Areas and to abandon or otherwise transfer Common Areas so long as, in each case, both (i) the Board determines that the Members are not materially or adversely affected, and (ii) Declarant and two-thirds (2/3) of the Class A Memberships have executed an instrument agreeing to such change in size, shape or location, exchange, abandonment or transfer.

Section 4.2 Delegation of Use. Any Owner or Resident may, in accordance with the Declaration and the Association Rules and the limitations therein contained, delegate his right of enjoyment in the Common Areas and facilities to the members of his family, his tenants or his guests; provided, however, that the Association shall have the right to limit the number of guests of an Owner or Resident using the Common Areas.

Section 4.3 Waiver of Use. No Owner may exempt himself from personal liability for Assessments, nor release the Lot owned by him from the liens or charges arising under this Declaration by waiver of his use and enjoyment of the Common Areas.

Section 4.4 Use and Benefit Easements. Subject to the Driveway Easement described in Section 4.5 hereof, there is hereby created in favor of the Owner and Occupants of each Lot, their agents, employees, guests and invitees, a permanent non-exclusive easement in, under, over and through the side yard of their Dwelling Unit for their general use and benefit, including but not limited to ingress, egress, and landscaping, as generally depicted on Exhibit "B" attached hereto ("Use and Benefit Easement"). Notwithstanding the foregoing, each Owner shall have the right to enter the Use and Benefit Easement for maintenance of and repairs to the Blank Wall of their Dwelling Unit, and nothing shall be placed within a Use and Benefit Easement that would prevent the Owner from performing such maintenance or repairs. No structure Visible from Neighboring Property may be constructed within a Use and Benefit Easement, or items attached to the exterior of



the Blank Wall, or modifications made to the exterior of the Blank Wall, except as approved in writing by the Design Review Committee and the Owner of the Blank Wall. No doors, windows or openings of any kind are permitted in the Blank Wall of the Dwelling Unit along the Use and Benefit Easement. The location of the each Use and Benefit Easement is indicated on the Plat. In the event that there is a discrepancy between the location of a Use and Benefit Easement on the Plat and the actual construction by Declarant or Declarant's developer of the Dwelling Units and shared walls, the dimensions of the actual construction by Declarant or Declarant's developer of the Dwelling Units and shared walls shall be deemed the location of the Use and Benefit Easement. For itself and the Association, Declarant retains and reserves the right to use each Use and Benefit Easement for other purposes which are not inconsistent with the uses permitted herein. Each Owner, its successors, assigns and grantees, hereby agrees to defend, indemnify and hold harmless Declarant, its successors and assigns, and the Association, from and against any and all damages, costs and liabilities, including without limitation, attorneys' fees, mechanic's and materialmen's liens, property damage, real estate taxes and assessments, arising out of or in connection with the Use and Benefit Easement appurtenant to such Owner's Lot.

Section 4.5 Driveway Easements. Notwithstanding the Use and Benefit Easements described above and set forth within the Plat, each Owner shall have the right to use and maintain, and to park vehicles that are in compliance with this Declaration within, a concrete driveway extension to the side of and connected to the main driveway leading to the garage of the Owner's Dwelling Unit as generally depicted on Exhibit "B" attached hereto ("Driveway Easement"). The dimensions and location of each Driveway Easement shall be established by the dimensions and location of the actual driveway extension constructed by Declarant or Declarant's developer. The Driveway Easement may be situated differently on corner or other non-typical Lots, and may not be uniform in all cases. Any portion of a Use and Benefit Easement established by the Plat that lies within a Driveway Easement shall be deemed terminated by this Declaration. Furthermore, any portion of a neighboring Lot or Common Area that lies within the dimensions of a Driveway Easement shall be subject to said Driveway Easement. Driveway Easements may only be abandoned or terminated by Recording a written instrument executed by the Board and by the Owner of the Lot benefiting from the Driveway Easement.

Section 4.6 Access Easements. If access to a Lot is through a Common Area, any conveyance or encumbrance of such Common Area is subject to such easement.

Section 4.7 Drainage Easement. Each Lot shall be subject to an easement for the drainage and/or retention of water from other Lots, the Common Areas or other property in accordance with the drainage plans for the Property or for any Lot as shown on the drainage plans on file with Maricopa County.

Section 4.8 No Liability. In no event is Declarant making any representation or warranty regarding the adequacy of any drainage onto or off any Lot, Common Area or other part of the Property and Declarant is assuming no responsibility or liability for drainage of water over, under, or across the Lots, Common Areas or any other part of the Property (whether such drainage is from neighboring property or other parts of the Property) nor for any damage, loss, costs, expenses or fees incurred as a result of any debris, silt, erosion, or other incidental consequences thereof.

ARTICLE 5  
PERMITTED USES AND RESTRICTIONS

Section 5.1 Covenants, Conditions, Restrictions and Easements Applicable to the Property. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all portions of the Property which are not Exempt Property (unless otherwise specifically indicated), the Owners, Residents and Occupants thereof:

(a) Architectural Control. The Property is subject to architectural control as established by the Design Review Committee. **Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters a Lot and is Visible From Neighboring Property, or the exterior appearance of improvements located thereon, shall be commenced, made or done without the prior written approval of the Design Review Committee.** The Design Review Committee shall have the right to charge non-refundable fees for the review of the site plans, house plans and landscape plans. The Design Review Committee may also require a deposit to secure the performance of the Owner's obligation hereunder. The Board shall approve the amounts of fees charged for plan review or required deposit, if any. All residences and Lots shall be governed by the minimum guidelines and restrictions set forth in this Declaration and more stringent standards as adopted by the Design Review Committee. The Design Review Committee may require submittal of a scaled plan of proposed site improvements, landscaping, floor plans, elevations of all four sides, and roof plans, and samples of building materials, finishes and colors, as it deems necessary. No changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be commenced or made without prior written approval of the Design Review Committee. The exterior of any building fence, wall, residence or other structure shall not be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Design Review Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Design Review Committee. The Design Review Committee shall have the right (but not the obligation) to delegate the Design Review Committee's authority to review plans and proposals to a paid professional consultant, including a member of the Design Review Committee. The Design Review Committee or Board may grant variances from the standards set forth in the Design Review Guidelines if the Design Review Committee or Board determines the matter permitted under the requested variance will not have a substantially adverse affect on other Owners and Occupants and is consistent with the common plan for the Property. Any Owner aggrieved by a decision of the Design Review Committee may appeal the decision to the Board in accordance with procedures to be established in the Design Review Guidelines. If a decision of the Design Review Committee is overruled by the Board on any issue in question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board.

(b) Restriction on Further Property Restrictions. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Occupant or other person (except Declarant) against any Lot without the provisions thereof having

been first approved in writing by the Board and any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void. Nothing contained herein shall preclude Declarant from modifying or supplementing this Declaration or imposing such additional covenants, conditions, reservations, and restrictions as Declarant deems appropriate.

(c) Utility Easements. There is hereby created a blanket easement upon, across, over and under the Property, including without limitation each and every Lot, for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems including, but not limited to, water, sewer, gas, telephone, electricity, drainage pipes, cable or communication lines and systems, as such utilities are installed in connection with the initial development of each Lot. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Lots and Common Areas and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings thereon. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utility or service lines may be installed or relocated within the Property except as initially created or approved by Declarant without the prior written approval of, in the case of a Common Area, the Association and the Design Review Committee or, in the case of a Lot, the Owner of such Lot and the Design Review Committee. Nothing contained herein shall entitle Declarant or any utility in exercising the rights granted herein to disturb any Dwelling Unit constructed in accordance with the requirements hereof. Declarant further reserves such temporary construction easements for utility lines, maintenance of storage tanks and facilities and access to and from such facilities.

(d) Health, Safety and Welfare. In the event any uses, activities and facilities on any Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Occupants or Residents, the Board may make rules restricting or regulating their presence within the Property as part of the Association Rules, or may direct the Design Review Committee to make rules governing their presence on Lots as part of the Design Review Guidelines.

(e) Maintenance of Lawns and Plantings. Each Owner shall keep neatly trimmed, properly cultivated and free from trash, weeds and other unsightly material, all shrubs, trees, hedges, grass and plantings of every kind located on (i) its Lot (including set back areas and Common Areas), (ii) any other public right-of-way or easement area which abuts the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike path or similar area, and (iii) any non-street public right-of-way; provided, however, that such Owner shall not be responsible for maintenance of any area over which (A) the Association assumes the responsibility in writing; (B) the Association has been given such responsibility by a Recorded instrument as provided in Section 11.1 of this Declaration; or (C) County of Maricopa or other public agency assumes responsibility, for so long as the Association, said political subdivision or other

public agency assumes or has responsibility as provided in (A), (B) or (C) above. The Design Review Committee may require landscaping by the Owner of the areas described in subsections (ii) and (iii) above.

(f) Nuisances, Construction Activities. All construction of structures and installation of landscaping shall be governed by the following guidelines and restrictions (more stringent standards may be adopted by the Board):

(i) No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants.

(ii) Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, fireworks, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot.

(iii) 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 all Lots shall be kept in a neat and tidy condition during construction periods and trash and debris shall not be permitted to accumulate.

(iv) Each Owner shall be responsible for immediately removing any dirt, mud or debris collecting in public streets as a result of the Owner's construction activities.

(v) Any structure started upon any Lot shall be completed within six (6) months except when such delay is caused by acts of God, labor strikes or outages, actual inability to procure delivery of necessary materials, by interference by other persons or forces beyond the control of the Owner to prevent, or as approved by the Design Review Committee.

(vi) The Design Review Committee may require a deposit in an amount to be established by the Board to secure the performance of the Owner's obligations under this Section to clean up and/or remove equipment, building materials, dirt, debris and similar

materials, and to protect from damage and repair any damage to improvements sustained, in connection with construction activities by or for the benefit of Owner and to ensure that the construction or modification will be made in accordance with the plans and specifications approved by the Design Review Committee.

The Board, in its sole discretion, shall have the right to determine the existence of any nuisance under this Subsection 5.1(f).

(g) Repair of Building. Each Owner shall be responsible for the maintenance and repairs of the interior and exterior of any building or structure on the Owner's Lot. No Owner shall permit any building or structure on any Lot to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Subsection (a) above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

(h) Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot or Common Area except:

(i) Signs required by legal proceedings.

(ii) Numbering designating the street address of the Dwelling Unit (a) stenciled and located on the curb immediately in front thereof or (b) affixed to the Dwelling Unit.

(iii) Signs indicating a property to be "For Sale" or "For Lease," provided no more than one (1) such sign is located on each individual residence, no individual sign is larger than five hundred (500) square inches in size, and no sign is placed closer to the street than six (6) feet. No "For Sale" or "For Lease" signs, regardless of size, shall be permitted within the Common Area at any time.

(iv) Such other signs which are in conformance with the applicable requirements of the County of Maricopa or other applicable governmental agencies and which have been approved in advance and in writing by the Design Review Committee as to size, color, design, message content and location.

The foregoing shall not prohibit signs constructed by Declarant to identify the Property or to direct traffic to the Property in connection with the sale of Lots.

(i) Roof Structures and Equipment. No solar units or panels, heating, air conditioning or ventilation equipment, or any other equipment or structures shall be located or installed on any roof of a Dwelling Unit or other improvement on a Lot except as expressly permitted herein. The Board may grant a variance for solar panels or other solar equipment if attractively screened in accordance with standards established by the Board, subject to applicable federal or state energy conservation laws governing the installation of solar equipment on Dwelling Units. The Association may not prohibit or unduly restrict satellite dishes and antennas of the types covered by the Federal Communications Commission rules promulgated pursuant to the Telecommunications Act of 1996, as amended from time to time; provided that nothing shall preclude the Association from adopting reasonable safety and/or architectural aesthetics rules which do not impede the Owner's ability to obtain adequate reception from a protected class of satellite dishes or antennas within the scope of the FCC Rules. Without limiting the foregoing, all satellite dishes or antennas within the scope of the FCC Rules shall be ground-mounted unless, as a result of such placement, the Owner is not able to obtain a satisfactory signal as defined in the FCC Rules.

(j) Garages. Garages shall be used principally for the parking of vehicles and shall be furnished with garage doors.

(k) Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by Declarant or as may be otherwise approved by the Design Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Committee.

(l) Permitted Uses. Except for the construction, maintenance, and other activities related to the model homes as provided below, the Lots shall be used, improved and devoted exclusively to residential use by Single Families. No gainful occupation, profession, trade or other non-residential use, other than the keeping of an office for private use, shall be conducted on the Lot and no person shall enter into any Lot for the purpose of engaging in such uses or for the purpose of receiving products or services arising out of such usage.

(m) Animals. No animal, horse, bird, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and no animal of any sort shall be kept on a Lot before a certificate of

occupancy is issued by Maricopa County for the Dwelling Unit. This prohibition includes, without limitation, guard dogs or any other animal maintained, kept or housed on a Lot for security or to prevent theft during the course of construction. An animal is permissible only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, poultry or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

(n) Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be constructed, erected, placed or used on portions of the Property at any time for any purpose whatsoever, either temporarily or permanently. Notwithstanding the foregoing, it shall be expressly permissible for Declarant to maintain, during the period of construction and sale of Lots within the subdivision, upon such portions of the Property as Declarant may authorize, both a temporary office and a trailer which are convenient or incidental to the sale of Lots and the construction of residences on such Lots.

(o) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

(p) Antennas. No antenna, satellite dish, or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation which is Visible From Neighboring Property shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, unless approved by the Design Review Committee.

(q) 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 which are approved by Maricopa County, if applicable, and acceptable to the appropriate garbage/trash collector. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. In no event shall such containers be placed for collection before sunset of the day immediately preceding the day of collection. All rubbish, trash, or garbage shall be promptly removed from all Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(r) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot.

(s) Window Treatments. All windows within any Dwelling Unit constructed on any Lot shall be covered with appropriate window treatments within sixty (60) days after first occupancy thereof, unless the design of a particular window which has been approved by the Design Review Committee does not require additional treatment. No reflective materials, including but not limited to aluminum foil, reflective screens or glass, mirrors or similar-type items shall be installed or placed on the outside or inside of any windows unless approved by the Design Review Committee. The exterior side of all drapes, curtains or other window coverings shall blend with the natural colors of the Dwelling Unit.

(t) Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls between Lots shall be as follows:

(i) The Owners of contiguous Lots who have a party wall shall both equally have the right to use such wall, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(ii) In the event that any party wall is damaged or destroyed through the act of an Owner or any of his agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in subsection (iii) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(iii) In the event any party wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such party wall to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the party wall.

(iv) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall without the prior consent of all Owners of any interest therein whether by way of easement or in fee.



(v) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(vi) Anything in the foregoing to the contrary notwithstanding, in the case of party walls (A) between Common Areas and Lots, or (B) constructed by the Declarant or the Association on Common Areas, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article 8 hereof, except that each Owner of a Lot shall be responsible for maintenance, repair, painting and replacement of the portion of the party wall facing his Lot or the portion thereof which is not a portion of the Common Area.

(u) Walls and Fences. No solid wall or fence shall be constructed or maintained closer to the front street line, side yard lines and back yard lines of any Lot than the minimum front yard, side yard and backyard building set back lines, respectively, unless otherwise approved by the Design Review Committee. Except as may be specifically permitted by the Design Review Committee, no side or rear fence and no side or rear wall (except the wall of the building constructed on any of said Lots), shall be more than six (6) feet in height, as measured from the higher side of such fence or wall. **Notwithstanding the foregoing, all fences and walls are subject to Design Review Committee approval.** In no event shall chain link or wire fencing be allowed.

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

(w) Trucks, Trailers, Campers and Boats. No commercial or industrial motor vehicle classed by manufacturer rating as exceeding 1 ton, recreational vehicle, camping trailer, boat or similar equipment may be parked, maintained, constructed, reconstructed or repaired on any Lot or street in the Property so as to be Visible From Neighboring Property or to be visible from the Common Areas or the streets.

(x) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street in the Property, and no inoperable vehicle may be stored or parked on any such Lot or street so as to be Visible From Neighboring Property or to be visible from the Common Areas or the streets.

(y) Parking.

(i) Vehicles of all Owners, Occupants and Residents, guests, and the invitees of Owners are to be kept only in a garage or driveway on a Lot during night time hours. The Board shall establish from time to time the hours that vehicles are prohibited from the streets. In no event shall a disabled or inoperative vehicle be maintained on a street, driveway or otherwise be Visible from Neighboring Property or from the Common Areas.

(ii) All parking shall be subject to applicable Fire Department regulations and requirements. Fire code requires that there shall be no parking or other obstructions in designated fire lanes, if any. The Board will enforce the no parking requirements and the appropriate fire department will not require the posting of fire lane signs so long as the Board enforces such requirements.

(iii) If the appropriate fire department finds that this enforcement is not working, then the Board or its legal representative will install the posts and signs per City Code and the maintenance thereof will fall to the Association. If requested by the fire department, the Board shall confirm in writing its agreement with respect to the parking requirements set forth herein.

(z) Towing of Vehicles. The Board shall have the right to have towed any vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration.

(aa) Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family tenant from time to time by the Owner, subject to the provisions of this Declaration.

(bb) Environmental Protections. Neither the Lot nor any facilities on the Lot shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this paragraph, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," or "toxic substances" in: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the Arizona

Environmental Quality Act, Laws 1986, Chap. 368; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

(cc) No Subdivision. No Lot shall be further subdivided by any Owner into smaller lots or parcels and no portion less than all of any such Lot shall be conveyed, transferred or hypothecated by any Owner. Nothing in the foregoing shall preclude Declarant from replatting the Property or re-subdividing any Lot.

(dd) Adjacent Livestock. Each owner is hereby notified that livestock and other animals may be permitted to be kept and maintained on the property located adjacent to and/or nearby the Property. By acquiring any Lot within the Property, each Owner acknowledges that it has carefully considered the effects of such livestock and other animals, together with their attendant noise, odor, dust, and all other effects that may be caused by the maintenance of such livestock and animals. Declarant shall have no responsibility or liability for any damage, loss, costs, expenses or fees incurred as a result of any such livestock or animals or incidental consequences thereof.

(ee) Declarant's Exceptions. Nothing contained in this Declaration shall be construed to prevent or restrict the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the construction, development, identification, or sale of Lots, including without limitation, the use of any Lot for temporary offices, model home purposes, mill or construction yard purposes until the completion of construction on all of the Lots. Also without limiting the generality of the foregoing, the Declarant shall be exempt from the requirements of all Design Review Guidelines and architectural control provisions contained herein.

## ARTICLE 6 ORGANIZATION OF ASSOCIATION

Section 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. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 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 as the same may be amended from time to time. The initial Board shall be composed of three (3) members. Once the number of all Class A Memberships is greater than the number of votes entitled to be cast by Class B Memberships pursuant to Section 7.3(b) of this Declaration, the Board shall be composed of at least five (5) members. The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association.

Section 6.3 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 rules and regulations to be known as the "Association Rules." The Association Rules may restrict and govern the use of any Common Area by any Member, Occupant or Resident; provided, however, that the Association Rules shall not be inconsistent with this Declaration, the Articles or the Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. So long as Declarant owns any Lot, the Association Rules and any amendments thereto must be approved in writing by Declarant in order to be effective.

Section 6.4 No Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 6.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

## ARTICLE 7 MEMBERSHIPS AND VOTING

Section 7.1 Owners of Lots. Each Owner of a Lot which is subject to assessment, pursuant to Article 8 hereof, shall be a Member of the Association. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable and joint ownership or ownership of undivided interests in any real property which establishes a Membership shall not cause there to be more Memberships than the number established for purposes of this Section 7.1.

Section 7.2 Declarant. The Declarant shall be a Member of the Association for so long as Declarant holds a Membership pursuant to Section 7.3 below. Declarant shall be entitled to hold a Class B Membership so long as Declarant owns any Lot.

Section 7.3 Voting Memberships. The Association shall have two classes of voting Memberships:

(a) Class A. Class A Memberships shall be all Memberships, except the Class B Memberships held by the Declarant, and each Owner shall be entitled to one (1) vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof;

(b) Class B. Until converted to Class A Memberships as provided below, each Membership owned by Declarant shall be a Class B Membership. At the time of any vote by the Members of the Association, Declarant shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B Memberships shall cease and be converted to Class A Memberships on the first to occur of the following:

- (i) The 31<sup>st</sup> day of December, 2016; or
- (ii) The date Declarant notifies the Board in writing that Declarant is terminating its Class B Memberships and converting such Memberships to Class A Memberships.

Section 7.4 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

Section 7.5 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

Section 7.6 Transfer of Membership. The rights and obligations of the Owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of a Lot and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effectuated by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

Section 7.7 Suspension of Voting Rights. If any Owner is in arrears in the payment of any Assessments or other amounts due hereunder or is otherwise in default under any of the provisions of this Declaration and such violation is not cured before any meeting of the Members when votes are to be taken, the Owner's right to vote as a Member of the Association shall not be exercisable for such meeting and shall remain suspended until all payments, including accrued interest, penalties and attorneys' fees as set forth below, are brought current, and until any other infractions or violations of this Declaration are cured.

## ARTICLE 8

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 8.1 Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. The Declarant, for each Lot hereafter established within the Property, hereby covenants

and agrees and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree to pay to the Association the following assessments and charges as provided herein: (1) Regular Assessments established by this Article; (2) Special Assessments for Capital Improvements or other extraordinary expenses or costs established by this Article; (3) Maintenance Charges established by Article 11; (4) Capital Reserve Assessments established by this Article; and (5) Transfer Fees established by this Article; as such Assessments are to be established and collected as hereinafter provided. The Regular Assessments, Special Assessments, Maintenance Charges, Capital Reserve Assessments and Transfer Fees (sometimes referred to collectively as the "Assessments" and individually as an "Assessment"), together with interest, penalties, costs, and reasonable attorneys' fees, shall be a charge, continuing servitude and lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the Assessment was due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by such successors.

Section 8.2 Regular Assessments. To provide for the uses and purposes specified in Article 10 hereof, including the establishment of replacement and maintenance reserves, real estate taxes, insurance, management fees and such expenses that the Board deems reasonable or necessary to conduct the business of the Association, the Board shall assess against each Membership a Regular Assessment. The amount of the Regular Assessment shall be determined with the objective of fulfilling the Association's obligations under this Declaration to provide for the uses and purposes specified in Article 10. The Board may, during the Assessment period, revise the amount of the Regular Assessment in order to meet expenses which exceed the amounts anticipated by the Association and collect such increased assessment in accordance with procedures established pursuant to Section 8.10 below. The Regular Assessment shall be assessed against each Member commencing with the year the first Lot is conveyed by the Declarant, provided, however, that in the event fulfillment of the purposes of the Association does not require the imposition of a Regular Assessment at that time, the Board may delay the initial imposition of the Regular Assessment against each Member until such time as the fulfillment of the purposes of the Association require such imposition.

Section 8.3 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Regular Assessments authorized above, the Association may levy, in any Assessment period, a Special Assessment applicable to that Assessment period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses; provided that any such Special Assessment must have the prior written consent of Declarant, if it still holds a Class B Membership, and seventy-five percent (75%) of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this section shall not preclude or limit the assessment, collection or use of the Regular Assessments for the aforesaid purposes.

Section 8.4 Capital Reserve Fund; Transfer Fee. In addition to the Regular Assessments and Special Assessments authorized in this Declaration, a Capital Reserve Assessment may be levied against a new Member at the time of a transfer of a Lot to such Member. Such Capital Reserve Assessment shall be in such amount as determined by the Board and is separate and in addition to any other Assessment. Notwithstanding Section 10.1 hereof, the Capital Reserve Assessments may be kept in the general fund or in a separate capital reserve fund as determined by the Board. The Board may also charge a transfer fee to be reasonably set by the Board upon the initial and any subsequent sale of a Lot ("Transfer Fee").

Section 8.5 Rate of Assessment. Regular Assessments may be collected on a monthly, quarterly, or annual basis as determined by the Board and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment. Subject to Section 8.10, the amount of any Regular Assessment shall be set in the sole discretion of the Board except that (i) in regard to all Members other than Declarant, the Regular Assessment must be fixed at a uniform rate for each Lot, and (ii) in regard to Declarant, the Regular Assessment shall be an amount per Lot equal to 25% of such uniform rate set in subsection (i) hereof. All Special Assessments shall be on a uniform basis per Lot. Regular Assessments shall not commence until after all Common Area improvements and landscaping have been completed and conveyed to the Association.

Section 8.6 Notice and Quorum for Any Action Authorized Under Section 8.3. Written notice of any meeting called for the purpose of taking any action authorized under Section 8.3 of this Article shall be sent to all Members subject to such assessment no less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Any Member can waive notice to a meeting and right to vote may be exercised by proxy pursuant to such rules as the Board may from time to time promulgate.

Section 8.7 Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein, for the billing and collection of the Assessments, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice, prior to such foreclosure or enforcement at the address of the Member on the records of the Association, that the Assessment, or any installment 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 Membership changes during an Assessment period; successor Owners of Lots shall be given credit on a prorated basis for prepayments made by prior Owners.

Section 8.8 Computation of Assessments; Annual Budget. The Board shall adopt a budget for each fiscal year of the Association, which budget shall serve as the basis for determining the Assessments for the applicable fiscal year (subject to the limitations of Section 8.9 hereof). Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall make available to each Owner upon request a copy of the budget and a statement of the amount of Assessments to be levied against such Owner's Lot for that year. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided in Section 8.10, neither the budget nor any Assessment levied pursuant thereto shall be required to be approved by the Owners.

Section 8.9 Due Dates. Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due.)

Section 8.10 Maximum Regular Assessment. The Regular Assessments provided for herein shall not at any time exceed the "Maximum Regular Assessment" as determined in accordance with this Section. For the fiscal year ending 2006, the Maximum Regular Assessment shall be Sixty-Five Dollars (\$65.00) per month for each Lot. Thereafter, except as provided below, unless a greater increase is approved by a vote of two-thirds (2/3) of the votes of each class of Members represented in person or by proxy at a meeting of Members called for such purpose, the Maximum Regular Assessment for any fiscal year shall be equal to the Regular Assessment for the immediately preceding fiscal year increased by the greater of: (a) ten percent (10%); or (b) the percentage increase for the immediately preceding year over the year before that in the Consumer Price Index--All Urban Consumers--All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor) or other comparable or similar index as determined by the Board in its reasonable discretion. Further, notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Regular Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by this Declaration to be maintained by the Association; (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration; or (iii) taxes, notwithstanding the fact that the resulting increase in the Maximum Regular Assessment is greater than otherwise permitted under the third sentence of this Section 8.10.

Section 8.11 Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear a late fee and default interest, the amount of which shall be set forth in Section 9.1 below and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting such amounts or in enforcing all of the rights and remedies provided herein. The Board also may, but is not obligated to, Record a Notice of Delinquent Assessment against any Lot as to which an



Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 8.12 Evidence of Payment of the Assessments. Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating (a) that all Assessments (including costs and attorney's fees, if any, as provided above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all Assessments have not been paid, the amount of such Assessments (including costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charge must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

Section 8.13 Property Exempted from the Annual, Special Assessments and Assessment Lien. Exempt Property shall be exempted from the Regular Assessments and Special Assessments and, except as provided in Article 11, from Maintenance Charges and the Assessment Lien; provided, however, that if any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall, to the extent applicable, be subject to the Regular Assessments and Special Assessments and, if exempt therefrom, Maintenance Charges (prorated as of the date it became Assessable Property) and the Assessment Lien.

Section 8.14 No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Declaration.

## ARTICLE 9 ENFORCEMENT OF DECLARATION AND ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

Section 9.1 Enforcement. The Declarant, for so long as it holds a Class B Membership, and the Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. Any amounts owing the Declarant or Association hereunder as a result of a default by any Owner shall be immediately subject to a late payment penalty as may be set by the Board from time to time (not to exceed the greater of 10% of the amount owed or \$50.00), plus default interest on the amount of such late payment and such late payment fee, at a per annum rate equal to 18%. In the event of a default of any provisions hereof, including without limitation, any failure to comply with use restrictions or landscaping or design review

control, the Association or Declarant shall be entitled to obtain, in addition to any other rights or remedies at law or in equity, immediate injunctive relief. Each Owner agrees that damages are an inadequate remedy for any violation of any term or provision of this Declaration. If any Owner fails to keep the streets clear of mud, dirt or debris resulting from the construction activities as set forth herein or fails to keep any Lot clear of rubbish or debris or maintains a nuisance or unsafe, unsightly or offensive condition thereon or otherwise undertakes any activity or fails or permits any condition or circumstance to arise that constitutes a violation of any term or condition of this Declaration, the Declarant or Association shall be entitled to take such action as it deems appropriate in order to correct or remove such condition and enter the Lot, street or other property on which such condition exists, with or without such notice as the Declarant or Association deems prudent under the circumstance, and all costs, expenses and fees (including attorney's fees incurred by the Declarant or Association in taking such action) shall be immediately due and owing by the Owner creating, causing or permitting such condition to exist, together with default interest from the date such costs are incurred and late payment fee as set forth above. The exercise of the Declarant's and Association's rights shall not be deemed to cure such default and may be exercised in addition to and not in lieu of any other right or remedy provided herein or at law or in equity.

Section 9.2 Remedies to Enforce Payment of Regular Assessments, Special Assessments, Capital Reserve Assessments and Maintenance Charges. If any Member fails to pay the Regular Assessments, Special Assessments, Capital Reserve Assessments, Transfer Fees, or installments when due, or to pay Maintenance Charges assessed pursuant to Article 11, the Association may enforce the payment of such Assessments and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments;

(b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages or, if applicable, a non-judicial sale under deeds of trust (including, where applicable, the right to recover any deficiency) and, if foreclosed as a realty mortgage, the Lot may be redeemed after foreclosure sale as provided by law.

Section 9.3 Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the

Lot free of the Assessment Lien for all Regular Assessments, Special Assessments, Capital Reserve Assessments, Transfer Fees and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Regular Assessments, Special Assessments, Maintenance Charges, Capital Reserve Assessments, Transfer Fees and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 9.4 Costs to be Borne by Member in Connection with Enforcement of Payment of Regular Assessments, Special Assessments and Maintenance Charges. In any action taken pursuant to Section 9.2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, Regular Assessments, Special Assessments, Capital Reserve Assessments and Maintenance Charges together with interest, penalties and Association's collection costs and attorney's fees, including those costs and fees specified in Section 8.7.

## ARTICLE 10 USE OF FUNDS

Section 10.1 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Regular Assessments and Special Assessments, Transfer Fees, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Property and the Members and Residents 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, which may be necessary, desirable or beneficial to the general common interests of the Property, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance of walls, project signage and landscaping on Common Areas and public right-of-way and drainage areas within the Property, obtaining of liability insurance, supplying of utilities and other public services, providing for communication and transportation within and dissemination of information concerning the Property, indemnification of officers and directors of the Association, including such Director and Officer liability insurance as the Board deems appropriate, and generally protecting the health and safety of the Members and the Residents. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

Section 10.2 No Borrowing Power. The Association may not borrow money unless specifically authorized by Declarant. In no event shall Declarant authorize any borrowing in excess of \$10,000 without the consent of the majority of the Class A Members and in no event shall the proceeds of any borrowing be applied to any expenditure that could not otherwise be defrayed through the application of the proceeds of the Regular Assessments.

Section 10.3 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Regular Assessments or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Regular Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 10.4 Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas, with the amount and type of coverage to be determined by the Board.

Section 10.5 Fidelity Bonds. The Association may maintain, if the Board decides it is appropriate to do so, blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association and all other persons handling or responsible for funds of or administered by the Association, including, without limitation, any management agent to whom the Association has delegated some or all of the responsibility for handling of such funds. The total amount of fidelity bond coverage shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, or (ii) the sum equal to three months Regular Assessments on all Lots and parcels plus adequate reserve funds.

## ARTICLE 11 MAINTENANCE

Section 11.1 Common Areas and Public Rights-of-Way. The Association, or its duly delegated representative, shall maintain and otherwise manage, all Common Areas, including, but not limited to, streets, entry signs, drainage and flood control areas, the landscaping, project perimeter walls, walkways, paths, parking areas, drives and other facilities. The Association shall also maintain any landscaping and other improvements not on Lots which are within the exterior boundaries of the Property which are intended for the general benefit of the Owners and Residents of the Property, including landscaped medians within any rights-of-way, "cluster" mail boxes, bike path, signs and lighting. The Association shall not maintain areas which (i) Maricopa County or other governmental entity is maintaining, or (ii) are to be maintained by the Owners of a Lot unless the Association elects to maintain such areas. Specific areas to be maintained by the Association may be identified on the Plat or approved by the Declarant, and in Deeds from the Declarant to a transferee of a Lot, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such Common Areas and other areas intended for the general benefit of the Property. Maricopa County is not responsible for and will not accept maintenance of any of the Common Areas or other private areas within the Project, including any private facilities, streets and landscaped areas.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so the Property development will reflect a high pride of ownership. In connection therewith the Association may, in the discretion of the Board:

- (a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any Common Area;
- (b) Replace injured and diseased trees and other vegetation in any Common Area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (c) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (d) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

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

In the event this Declaration permits the Board to determine whether Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners, Occupants and Residents of the Property for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article 11 and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 11.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests or invitees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject, and shall be secured by the Assessment Lien.

Section 11.3 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Property which are substantially

affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration or the Design Review Guidelines, standards and rules and regulations of the Design Review Committee, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien.

## ARTICLE 12 DESIGN REVIEW COMMITTEE

Section 12.1 Establishment. Declarant shall establish a Design Review Committee and shall establish and adopt Design Review Guidelines and procedural rules and regulations to direct the Design Review Committee in the performance of its duties. The Design Review Committee shall consist of three (3) regular members and an alternate member, each appointed by Declarant. The appointees need not be Owners, Occupants or Residents and need not possess any special qualifications except such as Declarant may, in its sole discretion, require. Declarant may replace any member of the Design Review Committee at any time with or without cause. In the event of the death or resignation of any member of the Design Review Committee, Declarant shall replace said member within ninety (90) days following such death or resignation. Pending the replacement of such deceased or resigned member, the remaining member or members of the Design Review Committee shall have full authority to act as the Design Review Committee under this Declaration. Declarant's right to appoint, remove, and replace Design Review Committee members shall cease and the Board shall be vested with those rights and all rights of the Declarant pertaining to the Design Review Committee upon the earliest to occur of the following: at such time as Declarant no longer owns any Lot in the Property or when such rights are expressly relinquished by Declarant to the Board in writing.

Section 12.2 Purpose. The purpose of the Design Review Committee is to maintain consistency of architectural and landscaping standards throughout the Property and thereby preserve the aesthetic and economic value of the Property. The Design Review Committee is hereby empowered to supplement and amend the Design Review Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary; provided, however, that such modifications are in general conformity with the standards set forth in this Declaration. None of the Design Review Committee, Declarant nor Association is assuming any liability for the economic value nor structural integrity of any improvement. Design Review Committee's decisions shall pertain solely to the matters set forth herein and shall in no way constitute a representation or warranty of economic value or structural integrity. All decisions shall be made in the Design Review Committee's sole discretion and shall be final and conclusive.

Section 12.3 Operation/Authority. It shall be the duty of the Design Review Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. A quorum for any such meeting of the Design Review Committee shall consist of two (2) members and a vote of two (2) of the members of the Design Review Committee shall be necessary for any decision. A duly appointed alternate member may participate in any meeting in which there is not a quorum of regular members present, may constitute a quorum by his/her presence and shall have all the authority of a regular member while so participating. The Design Review Committee shall have the right (but not the obligation) to delegate the Design Review Committee's authority to review plans and proposals to a paid professional consultant, including a member of the Design Review Committee. The Design Review Committee shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections, which may be indicated on the plans submitted or as the Design Review Committee may deem otherwise appropriate. The Design Review Committee shall have broad discretionary powers in determining whether an application is in conformance with the Design Review Guidelines. In addition, the Design Review Committee may disapprove any application if it, in its discretion, believes the applicant has not supplied sufficient or accurate information for the Design Review Committee to exercise the judgment required by this Declaration. The Design Review Committee has the authority to grant variances to the Design Review Guidelines by an affirmative vote of the majority of the members of the Design Review Committee. In no event, however, shall the Design Review Committee have the authority to grant any variance from a prohibition, restriction, requirement or other provision of this Declaration, unless expressly provided otherwise herein. The Design Review Committee shall keep complete written records of all applications for approval submitted to it (including one (1) set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Design Review Guidelines. For these purposes, an "application" to the Design Review Committee shall not be deemed submitted unless (i) it is in writing and in such form as the Design Review Committee may from time to time request, (ii) it is submitted with such elevations, drawings and other documents prepared by design professionals in accordance with industry standards and such requirements as the Design Review Committee may impose, (iii) it is submitted in such multiple copies and at such location or locations as specified by the Design Review Committee, (iv) it is accompanied by an application fee in the full and correct amount, and (v) it meets such other requirements as the Design Review Committee may from time to time impose. Each Owner and Builder is encouraged to submit to the Design Review Committee preliminary elevations for review to avoid incurring unnecessary costs making unacceptable final submissions. The Design Review Committee shall review an application submitted to it and issue its written decision within thirty (30) days of the date such application was submitted.

Section 12.4 Fee. The Board shall have the right, in its sole discretion, to assess against applicants a processing fee to, among other things, defer the costs incurred by the Design Review Committee for the services of an architect or other professionals in considering any requests for approval submitted to it. An architect or other professionals may serve on the Design Review Committee. The fee shall be in such amount and payable in accordance with such schedule as reasonably determined by the Design Review Committee. Any processing fee not paid in full at the time of submittal of the request for approval shall be added to, and become a part of, the Assessment

to which the requesting Owner and the Owner's Lot is subject, and shall be secured by the Assessment Lien. The Design Review Committee shall be entitled, however, to refuse to process the application if the applicant does not include payment of such fee.

Section 12.5 No Liability of Design Review Committee. All plans, drawings and specifications approved by the Design Review Committee are not approved for engineering, design or architectural competence. Through its approval of such plans, drawings and specifications, the Design Review Committee does not assume liability or responsibility therefor or for any defect in any structure constructed from such plans, drawings and specifications. Declarant, members of the Design Review Committee and members of the Board shall not be liable to the Association, any Owner or any other entity for any damage, loss or prejudice suffered or claimed because of:

- (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; or
- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications.

Section 12.6 Waiver. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval.

Section 12.7 Nonapplicability to Declarant. The provisions of this Article shall not apply to any Lots owned by Declarant or any person affiliated with Declarant. If, however, Declarant or any affiliate of Declarant undertakes construction of a Dwelling Unit on any Lot, such Dwelling Unit shall comply with the Design Review Guidelines.

## ARTICLE 13 RIGHTS AND POWERS OF ASSOCIATION

Section 13.1 Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours. Until such time as the Association is incorporated, Declarant shall and hereby reserves to itself, its successors and assigns, the exclusive right to exercise the powers, rights and duties granted to or imposed upon the Association under this Declaration.



Section 13.2 Association's Rights of Enforcement of Provisions of This and Other Instruments. The Association, as the agent and representative of the Owners and Occupants, shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. The Association shall have the power and right to pursue all available legal rights and remedies for violation of covenants set forth in this Declaration, and any other instruments set forth in this section, including, but not limited to, the right to pursue injunctive relief, a money judgment, and/or lien foreclosure, without being subject to a claim of election of remedies. Notwithstanding anything in this Declaration to the contrary, the Association shall have the sole discretion to pursue violations of covenants set forth in this Declaration, and any other instruments set forth in this section, by pursuing litigation, mediation or arbitration.

Section 13.3 Reservation of Trade Name. Declarant hereby reserves all right, title and interest in the name "Sienna Estates" and such other names as Declarant may use in connection with the Property or the Association for the uses set forth herein and any other use as Declarant may choose. The Association and all Owners shall be entitled to the non-exclusive use of the name "Sienna Estates" and other names only with reference to, and in connection with, the Property, the Association or its authorized activities. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant, or by an affiliate of the Declarant, of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant or by an affiliate of the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission, or other similar governmental authority, in order for any other corporation formed or incorporated by the Declarant, or by an affiliate of Declarant, to use a corporate name which is the same or deceptively similar to the name of the Association. Any officer of the Association, each acting alone without the other, is hereby authorized to execute on behalf of the Association such consents, approvals, confirmations, acknowledgments and other instruments as Declarant may request in order to evidence and confirm the rights and interests of Declarant in "Sienna Estates" and such other names as Declarant may use in connection with the Property or the Association.

Section 13.4 Bulk Service Agreements.

(a) The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners, residents and tenants of Lots, fire and emergency services, trash and refuse collection, cable television, community

satellite television or other electronic entertainment, information or communication services or any other service to the Lots or Owners: (a) which might not otherwise be generally available to such Owners, residents and tenants; (b) at rates or charges lower than might otherwise generally be charged to Owners, residents and tenants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners, residents and tenants generally; or (d) any combination of the foregoing.

(b) If all Lots are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly). If all Lots are not served by a particular Bulk Service Agreement, the Board shall have only the billing option described in clause (b) above.

(c) Declarant, for each Lot, hereby covenants and agrees, and each Owner other than Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot) by the Board pursuant to this Section, and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each person or entity who was an Owner of the Lot at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a person or entity controlling, controlled by or under common control with the Owner transferring title).

(d) No Owner of a Lot covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot under this Section, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no building has been completed.

(e) "Bulk Provider" means a private, public or quasi-public utility or other entity which provides, or proposes to provide, fire and emergency services, trash and refuse collection, cable television, community satellite television or other electronic entertainment, information or communication services or any other service to the Lots or Owners pursuant to a "Bulk Service Agreement" (as defined below).

(f) "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide fire and emergency services, trash and refuse collection, cable television, community satellite television or other electronic entertainment, information or communication services or any other service to the Lots or Owners.

(g) As long as there is a Class B Membership, the Board shall be entitled to enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant, unless it shall agree in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any such fire and emergency services, trash and refuse collection, cable television, community satellite television or electronic entertainment, information or communication services. After there shall no longer be a Class B Membership, the Board shall not, without the approval of Members holding at least fifty-one percent (51%) of all Class A Membership votes represented in person or by proxy at an annual or special meeting of the Members of the Association, enter into a Bulk Service Agreement which imposes on the Association or its Members (other than Declarant, unless it shall agree in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any such fire and emergency services, trash and refuse collection, cable television, community satellite television or electronic entertainment, information or communication services, but nothing in this Section shall prevent the Board from entering into, or require approval by the Members of, any Bulk Service Agreement which imposes on the Association or its Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Phoenix, Arizona, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

#### ARTICLE 14

##### TERM; AMENDMENTS; TERMINATION

Section 14.1 Term; Method of Termination. This Declaration shall be effective upon the date of its Recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years

each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if ninety percent (90%) of the votes cast by each class of Members shall be cast in favor of termination at a meeting held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Section 9.3 above, on seventy-five percent (75%) of the Lots upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 14.2 Amendments. This Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 14.3 of this Article, shall certify that, at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws, the Owners casting at least seventy-five percent (75%) of the votes then entitled to be cast voted affirmatively for the adoption of the Amendment.

Section 14.3 Rights of Amendment if Requested by Governmental Agency or Lending Institutions. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), Federal National Mortgage Association or Federal Home Loan Mortgage Corporation and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lots or any portion thereof. Any such statements shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledge, specifying the federal, state or local governmental agency or the language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such amendment, and such Certificate, when Recorded, shall be binding upon all of the Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt, as an amendment hereto, other and different control provisions. Except as provided in this

Section 14.3 and in Section 14.4, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 14.2 of this Article.

Section 14.4 Declarant's Rights of Amendment. Notwithstanding anything in this Article to the contrary, Declarant shall, for so long as it possesses a Class B Membership, be entitled to unilaterally amend this Declaration if deemed reasonably necessary or desirable by Declarant.

Section 14.5 Effectiveness of Amendment. Any Amendment shall be effective as of the date it is Recorded notwithstanding any other provision hereof and notwithstanding the holding under Arizona Court of Appeals Case Scholten V. Blackhawk Partners, 184 Ariz. 326 (App. 1995).

## ARTICLE 15 SUBJECTING ADDITIONAL LANDS TO DECLARATION

Section 15.1 Subsequent Development. The Declarant, and its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development without the consent of the Owners within fifteen (15) years of the date of this Declaration. This provision is intended to be permissive in nature and any such planned development shall not bind the Declarant or its successors or assigns to make the proposed additions in any subsequent development.

Section 15.2 Supplementary Declaration. The additions authorized under this and the succeeding subparagraph, shall be made by recording a Supplementary Declaration of Covenants, Conditions, Restrictions, Reservations and Easements with respect to the additional property which shall extend the scheme of covenants, contracts, restrictions, reservations and easements of this Declaration to such property.

Section 15.3 Complementary Additions. Such Supplementary Declaration may contain such complementary additions and modifications to the covenants, contracts, restrictions, reservations and easements contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of the master plan. In no event, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing Property.

## ARTICLE 16 DISPUTE RESOLUTION

Section 16.1 Agreement to Resolve Certain Disputes Without Litigation. As used in this Article 16, the term "Claim" shall mean: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Areas or any Lot or any improvements situated thereon, including, without limitation, any claim or cause of action that the Common Areas are defective or that the Declarant or a developer or their agents, contractors, attorneys, employees, subcontractors, architects, engineers or consultants were

negligent in the planning, design, engineering, grading, construction or development thereof; of (b) any claim or cause of action against the Declarant or a developer or any employee, agent, attorney, director, member or officer of Declarant or a developer arising out of or in any way related to the development of the Property or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The Association, the Declarant, the developers, all Owners, lessees, residents and other persons bound by this Declaration, and any person not otherwise bound by this Declaration who agrees to submit to this Article (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Article shall apply to all Claims.

Section 16.2 Notice of Claim. Any Bound Party having or alleging to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim.

In the event the Claimant is the Association, the Association must provide written notice to all Members prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against a Declarant or a developer which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of any Declarant or the developer to correct such alleged defect and the opportunities provided to Declarant or the developer to correct such alleged defect; (c) the estimated cost to repair such alleged defect; (d) the name and professional background of the attorney retained by the Association to pursue the claim against a Declarant or a developer and a description of the relationship between such attorney and member(s) of the Board (if any); (e) a description of the fee arrangement between such attorney and the Association; (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Declarant or a developer and the source of the funds which will be used to pay such fees and expenses; (g) the estimated time necessary to conclude the action against the Declarant or a developer; (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle or responses to offers to settle made either by the Association or a Bound Party; and (i) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the alleged defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the alleged defect. The affidavit must contain the information required to be included in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

Section 16.3 Mediation. If the parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service agreed to by the Claimant and Respondent.

If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim.

If the parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the parties met, that the parties are at an impasse, and the date that mediation was terminated.

Section 16.4 Binding Arbitration. IN THE EVENT A CLAIM IS NOT RESOLVED BY MEDIATION, THE CLAIMANT SHALL HAVE FIFTEEN (15) DAYS AFTER THE DATE OF THE TERMINATION OF MEDIATION NOTICE TO SUBMIT THE CLAIM TO BINDING ARBITRATION IN ACCORDANCE WITH THIS SECTION. IF THE CLAIMANT FAILS TO TIMELY SUBMIT THE CLAIM TO ARBITRATION, THEN THE CLAIM SHALL BE DEEMED WAIVED AND ABANDONED AND THE RESPONDENT SHALL BE RELIEVED OF ANY AND ALL LIABILITY TO CLAIMANT ARISING OUT OF THE CLAIM. IF THE CLAIMANT SUBMITS THE CLAIM TO BINDING ARBITRATION IN ACCORDANCE WITH THIS SECTION, THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE FOLLOWING:

(a) Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules, or such other AAA rules as the AAA determines to be applicable (the "AAA Rules"). A Respondent may join as a party to the arbitration any Bound Party who may be liable to the Respondent or the Claimant with respect to the Claim.

(b) Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 16.4, the provisions of this Section 16.4 shall govern.

(c) Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 16.4 as the "Arbitrator."

(d) Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges.

Section 16.5 Use of Funds. In the event the Association recovers any funds from a Declarant, a developer or any other person as a result of a claim involving an alleged defect, the funds shall first be used to correct and or repair the alleged defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the alleged defect, and any excess funds shall be paid into the Association's reserve fund.

Section 16.6 Approval of Litigation. The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with this Article 16. Notwithstanding anything contained herein to the contrary, Article 16 shall not apply to any legal or equitable actions taken by the Declarant or the Association to enforce the terms of this Declaration.

Section 16.7 Arizona Statutory Compliance. In the event a court of competent jurisdiction invalidates all or part of this Article 16 regarding resolution of alleged defects and litigation becomes necessary, Declarant, Association and all Owners shall be bound by the applicable Arizona construction defect statute presently codified at A.R.S. §12-1361, et seq. and A.R.S. §33-2001 et seq.

**BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM FOR ALLEGED DEFECT RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 16 AND WAIVES THE RIGHT TO PURSUE DECLARANT OR ANY DECLARANT AGENTS IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 16. THE ASSOCIATION, EACH LOT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS FOR ALLEGED DEFECTS AS PROVIDED IN THIS ARTICLE 16, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A JURY. THE ASSOCIATION, EACH LOT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM FOR ALLEGED DEFECT BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH LOT OWNER VOLUNTARILY ACKNOWLEDGES 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 IN ANY WAY TO A CLAIM FOR ALLEGED DEFECT.**



Section 16.8 Amendment. This Article 16 shall not be amended or modified without the prior written consent of the Declarant.

## ARTICLE 17 MISCELLANEOUS

Section 17.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Covenants and provisions hereof.

Section 17.2 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.

Section 17.3 Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States on the date hereof.

Section 17.4 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 17.5 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding and in addition to the disclaimers respecting drainage as set forth above, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can, or will be, carried out, or that any land now owned or hereafter acquired by it is, or will be, subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is, or will be, committed to, or developed for, a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect. Declarant makes no representations or warranties that the use of any Property subject to this Declaration will not be changed in the future. In addition, Declarant makes no representations or warranties that a guard service will be provided or, if guard service is provided, that it will be provided during any particular hours or will be continued in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser of a Lot by real estate brokers or salesmen representing the Declarant shall be deemed to create any implied covenants or restrictions with respect to the use of any Property.

Section 17.6 References to the Covenants in Deeds. Deeds to, and instruments affecting, any Lot or any part of the Property may contain the Covenants 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 Covenants shall be binding upon the grantee/Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

Section 17.7 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder, provided that Declarant's rights and powers may only be assigned by a written, Recorded instrument expressly assigning such rights and powers.

Section 17.8 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 17.9 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.

Section 17.10 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Occupant or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 17.11 Indemnification/Acknowledgment. **THE OWNERS, AS DEFINED HEREIN, ACKNOWLEDGE THAT: (1) THE PROPERTY SUBJECT TO THIS DECLARATION CONTAINS COMMON AREAS; (2) THE COMMON AREAS ARE INTENDED SOLELY FOR AESTHETIC PURPOSES AND LIMITED RECREATIONAL USE; (3) THE COMMON AREAS POSSESS CERTAIN INHERENT DANGERS FROM WHICH THE OWNERS MUST TAKE PRECAUTIONS TO PROTECT THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS AND OTHERS; (4) NO SAFETY PERSONNEL WILL PATROL THE COMMON AREAS AND THE OWNERS ASSUME THE RISK AND THE RESPONSIBILITY OF PROTECTING THEMSELVES, THEIR FAMILIES, INVITEES, GUESTS OR OTHERS; AND (5) THE OWNERS WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT, THE ASSOCIATION, THE DESIGNATED BUILDERS AND THEIR SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, INJURIES, DAMAGES, EXPENSES AND COSTS, INCLUDING INTEREST AND ATTORNEYS' FEES, INCURRED BY OR CLAIMED AGAINST THE DECLARANT, THE ASSOCIATION, THE DESIGNATED BUILDERS AND THEIR**

**SUCCESSORS AND ASSIGNS UNDER ANY LAWS ARISING IN ANY WAY FROM OR IN CONNECTION WITH THE COMMON AREAS.**

Section 17.12 Declarant Rights. Notwithstanding anything contained in this Declaration to the contrary, restrictions contained in this Declaration shall not be construed or deemed to limit or prohibit any act of Declarant, or its employees, agents and subcontractors or parties designated by it in connection with the construction or completion of improvements upon or sale or leasing of the Lots or any other properties in the Property.

Section 17.13 FHA/VA Approval. For as long as there is a Class B Member and if VA or FHA certification is desired by Declarant, the following actions will require the prior approval of the VA and FHA unless such agencies have waived such requirements or unless the last sentence of this section applies: (i) annexation of additional properties into the Property (unless such annexation is in accordance with a plan of annexation or expansion previously approved by such agencies; (ii) mergers and consolidations; (iii) mortgages or otherwise encumbering Common Area; (iv) dedication or other transfer of Common Area; (v) dissolution of the corporation; and (vi) amendment of provisions in the Articles, this Declaration or the Bylaws to the extent required to be approved by the FHA or VA pursuant to their rules and regulations. Consent of FHA and VA to the foregoing will not be required if the FHA and VA have elected not to approve the Property for certification or if such approval has been revoked, withdrawn, canceled or suspended.

Section 17.14 Association as Arbitrator. The Association may, but not be obligated to, serve as an arbitrator in disputes between Owners. All Owners involved in the dispute must agree in writing (i) that the Association will serve as the arbitrator, and (ii) to the terms and conditions of the arbitration.

IN WITNESS WHEREOF, the undersigned has caused its name to be signed by the signature of its duly authorized representative as of the day and year first above written.

CORNERSTONE SIENNA ESTATES, LLC, an  
Arizona limited liability company

By: Cornerstone Homes and Development, Inc.,  
an Arizona corporation, its Manager

By   
Todd Tucker, CEO

"DECLARANT"

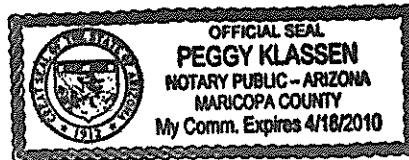
STATE OF ARIZONA       )  
                                          ) ss.  
County of Maricopa       )

On this the 23<sup>rd</sup> day of August, 2006, before me, the undersigned Notary Public, personally appeared Todd D. Tucker who acknowledged himself to be the CEO of Cornerstone Homes and Development, Inc, an Arizona corporation, Manager of Cornerstone Sienna Estates, LLC, an Arizona limited liability company.

Peggy Klassen  
Notary Public

My commission expires:

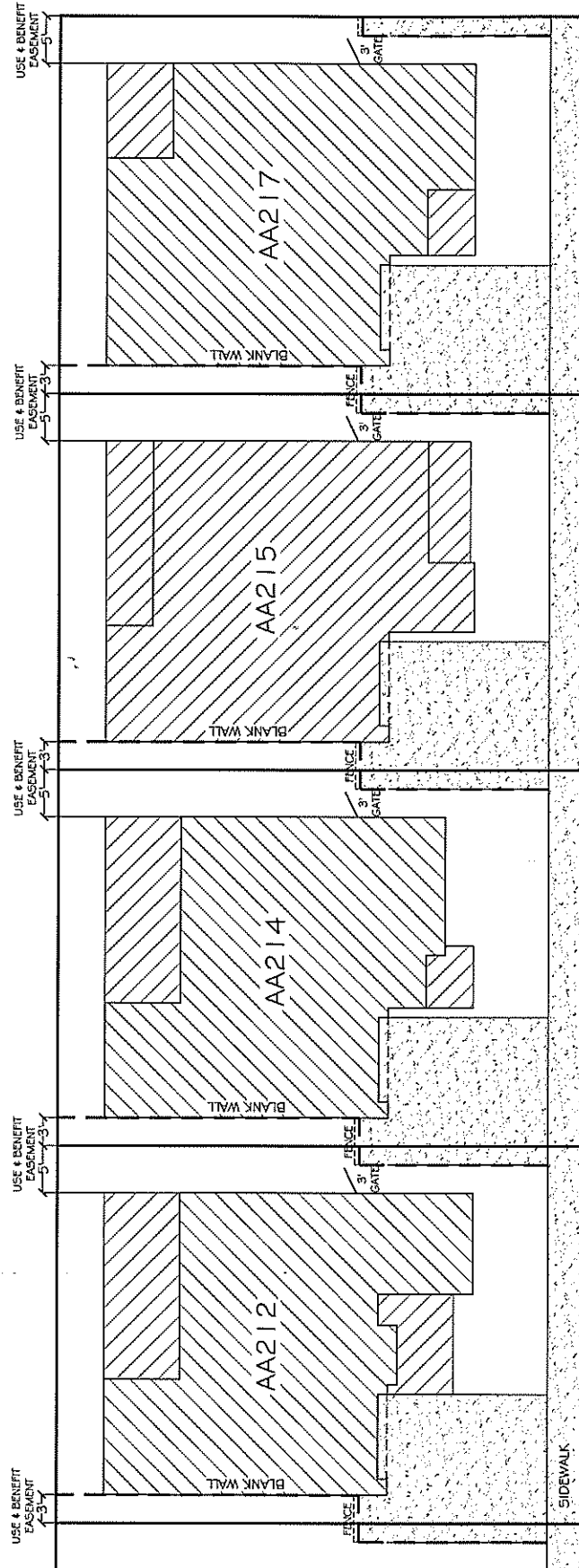
4-18-2010



## EXHIBIT "A"

Lots 1 through 154, inclusive, and Tracts A through N, inclusive, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 837, Page 19.

# EXHIBIT "B"



SIENNA ESTATES  
TYPICAL LOT LAYOUT  
N.T.S.