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Requested By: SAFFORD EAST LLC

Wendy John, Graham County Recorder

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

STONE WILLOW

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made this 3rd day of June, 2009, by Declarant (as defined below).

A. Declarant is the owner of the Property (as defined below). This Declaration imposes upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property. In furtherance of that plan, this Declaration provides for the formation of Stone Willow Property Owners Association, Inc., an Arizona nonprofit corporation, to own, operate and/or maintain certain common areas and community improvements and to administer and enforce the provisions of this Declaration, the By-Laws, and the Use Restrictions and Rules promulgated pursuant to this Declaration.

B. Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon and shall inure to the benefit of all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns.

ARTICLE I DEFINITIONS

The terms used in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Area of Common Responsibility." The Common Area and such other areas for which the Association is assigned or assumes responsibility pursuant to the terms of this Declaration or other applicable covenants, contracts or agreements.

1.2 "Articles of Incorporation" or "Articles" The Articles of Incorporation of Stone Willow Property Owners Association, Inc., an Arizona non-profit corporation, as filed with the State of Arizona Corporation Commission, as they may be amended.

1.3 "Association." Stone Willow Property Owners Association, Inc., an Arizona

nonprofit corporation, its successors or assigns.

1.4 "Base Assessments." Assessments levied on all Units subject to assessment, to fund Common Expenses for the general benefit of all Units, as more particularly described in Article VIII.

1.5 "Board of Directors" or "Board." The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under State of Arizona corporate law.

1.6 "Builder." Any Person that purchases one or more Units for the purpose of constructing improvements for later sale to consumers.

1.7 "By-Laws." The By-Laws of Stone Willow Property Owners Association, Inc. as adopted by the Association, as they may be amended.

1.8 "Class "A" Members." The members of the Association as described in Section 3.3.

1.9 "Class "B" Members". the Declarant as described in Section 3.3.

1.10 "Common Area" Retention basins and common landscaped areas, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.11 "Common Expenses." The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation, including, without limitation, the costs of performing the Association's responsibilities as provided in this Declaration. Common Expenses shall not include any expenses incurred with respect to the initial development, original construction, installation of infrastructure, original capital improvements or other original construction costs unless approved by a majority of the Class "A" Members.

1.12 "Community-Wide Standard." The standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard is expected to evolve over time as development progresses and may be more specifically determined by Declarant, the Board of Directors.

1.13 "Declarant." Safford East Park, L.L.C., an Arizona Limited Liability Company, or any successor, successor-in-title, or assign who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, there shall be no more than one Declarant at any time.

1.14 "Lot." A portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy

as a detached residence for a single family. The term shall refer to the land which is part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the public.

1.15 "Member." A Person subject to membership in the Association as provided in Section 3.2.

1.16 "Mortgage." A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.17 "Mortgagee." A beneficiary or holder of a Mortgage.

1.18 "Mortgagor." Any Person who gives a Mortgage.

1.19 "Owner." One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides.

1.20 "Person." A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.21 "Property." The real property described on Exhibit "A."

1.22 "Public Records." The Official Records of Graham County, Arizona.

1.23 "Special Assessment." Assessments levied in accordance with Section 8.5.

1.24 "Unit." A portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family. The term shall refer to the land which is part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the public.

1.25 "Use Restrictions and Rules." Those use restrictions and rules affecting the Property, which may be adopted, modified and repealed as set forth in Article X. Also The initial Use Restrictions and Rules set forth on Exhibit "B".

1.26 "Yard" (whether capitalized or not) means all portions of the lot other than the portions of the lot upon which the Detached Dwelling Unit or an Ancillary Unit is constructed. The term "Private Yard" means the portion of the yard that generally is not

Visible From Neighboring Property and is shielded or enclosed by walls, fences and similar structurally enclosed items (typically, a back or enclosed side yard of the lot). The term "Open Yard" means that portion of the Yard that is Visible From Neighboring Property, whether located in front of, beside, or behind a Detached Dwelling Unit (typically, a front yard or open side yard of a lot). The term "Enclosed Side Yard" means the enclosed side yard portion of a lot that is located behind, when viewed from the street in front of the Detached Dwelling Unit, the front wall of a lot. The Board will be the sole judge as to what constitutes a side yard.

ARTICLE II **PROPERTY RIGHTS**

2.1 Common Area. Every Owner shall have a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) this Declaration and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the right of the Board and the membership to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area pursuant to Article X, including rules limiting the number of guests who may use the Common Area;
- (d) the right of the Board to suspend the right of an Owner to use common area facilities, if any, within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of this Declaration, the By-Laws, or rules of the Association;
- (e) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
- (f) the right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
- (g) the right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (h) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts

incurred, subject to the approval requirements set forth in this Declaration; and

(i) Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area that is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3 Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least 67% of the Class "A" Members and of Declarant, as long as Declarant has any right, title, or interest in any portion of the Property, by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on any unimproved land remaining in the Common Area to the extent feasible, unless within 60 days after such taking, Declarant, as long as Declarant has any right, title, or interest in any portion of the Property and at least 75% of the Class "A" Members shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS**

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area and other portions of the Area of Common Responsibility to the extent such responsibility is assigned to or assumed by the Association. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Property as the Board or the membership may adopt pursuant to Article X. The Association also shall be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Arizona.

3.2 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3 Voting. The Association shall have two classes of membership, Class "A" and Class "B".

Class "A" - Class "A" Members all shall be Owners except the Class "B" Member, if any. Class "A" Members shall have one vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.9.

Class "B" - The Class "B" Member shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The total votes which the Declarant shall be entitled to cast may be cast in such proportion on any matters as the Declarant may determine. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, are specified in the relevant sections of this Declaration. The Class "B" Member may appoint a majority of the members of the Board of Directors as long as Declarant has any right, title, or interest in any portion of the Property.

The Class "B" membership shall terminate upon the earlier of:

- a. when Declarant no longer has any right, title, or interest in any portion of the Property; or
- b. when, in its discretion, Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

In any situation where a Member is entitled personally to exercise the vote for his or her Unit and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

ARTICLE IV

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area. The Association, subject to the rights of the Owners set forth in this

Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2 Personal Property and Real Property for Common Use; Conveyance of the Common Area. The Association through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant shall convey the Common Area to the Association upon the completion of the sale by Declarant of 75% of the Units or at such earlier date as the Declarant in its sole discretion shall determine.

4.3 Enforcement.

4.3.1 The Association and each Unit Owner may enforce the provisions of this Declaration or Association rules. The Association may impose sanctions for violations of this Declaration, the By-Laws, or Association rules, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. All remedies set forth in this Declaration shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

4.3.2 The Association shall not be obligated to take action to enforce any covenant, restriction or rule that the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

4.4 Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Indemnification.

4.5.1 The Association shall indemnify every officer, director, and committee member, including the members of the committees established under Article IX, and any employees and managers or managing agent, against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to

which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section or State of Arizona law.

4.5.2 The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

ARTICLE V

MAINTENANCE

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Areas of Common Responsibility. Also the front yards of each unit to mow, rake, weed , trim hedges and trees. The Association is not obligated to replace dead vegetation. Any unit owner not current with their base assessment may have their service suspended.

5.1.1 There are hereby reserved to the Association easements over the Property as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

5.1.2 Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, and other improvements comprising the Unit, in a manner consistent with the Community-Wide Standard and all applicable covenants. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner. The Association shall afford the Owner

reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

ARTICLE VI INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance: Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, in such amounts as the Board deems appropriate in the exercise of its business judgment:

(a) Blanket property insurance covering all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured Improvements;

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf;

(c) Workers' compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage;

(e) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(f) Such additional insurance as the Board in the exercise of its business judgment determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

6.2 Policy Requirements.

6.2.1 The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in Graham County, Arizona.

6.2.2 All Association policies shall provide for a certificate of insurance to be furnished, upon request, to each Member insured and to the Association.

6.2.3 The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Section 6. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units.

6.2.4 All insurance coverage obtained by the Board shall:

(a) be written with a company authorized to do business in the State of Arizona whose primary business is providing insurance coverage and which satisfies such minimum financial size and strength requirements as the Board deems appropriate in the exercise of its business judgment;

(b) be written in the name of the Association. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement; and

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which provide:

(a) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(b) waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(c) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(d) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(e) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(f) a cross liability provision; and

(g) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

6.3 Damage and Destruction. Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

6.3.1 Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least 75% of the Class "A" Members and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

6.3.2 If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

6.3.3 If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.3.4 Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and

for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

6.3.5 If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.

6.4 Owners' Insurance.

6.4.1 By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible.

6.4.2 Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE VII ADDITIONAL COVENANTS AND AMENDMENT

7.1 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Property to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Assessments. Such additional covenants and easements shall be set forth in a supplemental declaration recorded in the Public Records, and shall require the written consent of the owner(s) of such property, if other than Declarant. Any such supplemental declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.2 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any of the Property.

ARTICLE VIII ASSESSMENTS

8.1 Creation of Assessments. There are hereby created and the Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be two types of assessments: (a) Base

Assessments to fund Common Expenses for the general benefit of all Units; due the first day of each month, and (b) Special Assessments. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

8.1.1 All assessments, together with interest (computed from the due date of such assessment at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of State of Arizona law), reasonable late charges of \$35.00 for any payment more than ten (10) days late or in such amount as the Board may establish by resolution, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is levied until paid, as more particularly provided in this Declaration. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. All assessments, fees, penalties and other obligations due the Association must be paid before transfer of title. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

8.1.2 The Association shall, upon request, furnish to any Owner liable for any type of assessment an estoppel certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

8.1.3 Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at the closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each month. With advance payment of eleven months (11) the twelfth month is free. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

8.1.4 No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

8.1.5 While an Owner of a Unit serves as a member of the Board of Directors of the Association they are exempt from the obligation to pay base assessments to fund common

expenses with respect to their Unit. The exemption applies to only one Unit if the Unit Owner owns more than one Unit and it does not apply to special assessments.

8.2 Declarant's Obligation for Assessments. During the time Declarant is a Class "B" Member, Declarant may annually elect either to pay regular assessments on its unsold Units or pay the actual cost for the maintenance and upkeep of the common areas and the actual and necessary expenditures of the Association, whichever is less. Declarant may make such election at any time prior to the end of the fiscal year for such fiscal year; provided, if Declarant fails to notify the Board in writing of its election prior to the end of any fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as elected for the immediately preceding fiscal year. Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

8.3 Computation of Base Assessments. At least 90 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in this Declaration.

8.3.1 Until commencement of the first calendar year immediately following the first conveyance of a lot to an owner other than the Declarant the maximum base assessment for common expenses payable by each owner other than the Declarant shall be \$50.00 per month per lot at the commencement of the second month immediately following the first conveyance of a lot to an owner other than the Declarant. At commencement of each and every calendar year thereafter the board may set the base assessment at level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves provided, however, that in no event shall the Board impose a base assessment that is more than 20% greater than the base assessment during the immediately preceding calendar year without approval of Owners of not less than seventy five percent (75%) of the Units.

8.3.2 The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each owner at least sixty days prior to the proposed effective date of such budget. The budget and assessments shall become effective unless disapproved at a meeting by vote of at least 75% of the Class "A" Members and the vote of the Class "B" Member if such exists. Base Assessments shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, as well as any income expected pursuant to covenants imposed on land that is not included in the Property but that benefits from the Association's maintenance or other activities.

8.3.3 The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least 60 days prior to the proposed effective date of such budget. The budget and assessment shall become effective unless

disapproved at a meeting by vote of at least 75% of the Class "A" Members and the vote of Class "B" Member, if such exists.

8.3.4 The Board may revise the budget and any assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.3.5 If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget most recently in effect shall continue in effect until a new budget becomes effective hereunder.

8.4 Reserve Budget and Capital Contribution. The Board shall prepare annually reserve budgets for both general purposes which take into account the number and nature of those assets within the Area of Common Responsibility which have an expected life of more than one year, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments over the budget period.

8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted, extraordinary or other expenses which the Board determines to be more appropriately handled outside of the annual operating budget. Any such Special Assessment shall be levied against all Units. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Any Special Assessment adopted by the Board shall become effective 30 days after notice of such Special Assessment is sent to the Owners unless disapproved at a meeting by a vote of at least 75% of the Class "A" Members and by the vote of the Class "B" Member, if such exists.

8.6 Initial Assessment. In addition to the base assessments to fund common expenses and special assessments each purchaser of a unit shall pay to the Association immediately upon becoming a Unit owner an initial assessment in the amount of Three Hundred and no/100 Dollars (\$300.00) or such greater amount as shall be established from time to time by the Association which shall be deposited in a reserve account and shall be used for new improvements, periodic maintenance, repair and replacement of all or a portion of the existing improvements to the common area.

8.7 Lien for Assessments. All assessments authorized in this Article shall constitute a lien in favor of the Association against the Unit upon which they are levied until paid. The lien shall also secure payment of interest, late charges, and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, down payment assistance liens, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as Mortgages on real property

are foreclosed under the laws of the State of Arizona, which shall include the right of nonjudicial foreclosure if permitted under the laws of the State of Arizona.

8.7.1 The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association or Maintenance Corporation. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

8.7.2 The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under the provisions of this Declaration, including such acquirer, its successors and assigns.

The lien rights created in this Declaration shall be for the benefit of the Association.

8.8 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later.

8.9 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.10 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

(a) all Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and

(b) any property dedicated to and accepted by any governmental authority or public utility.

ARTICLE IX
ARCHITECTURAL CONTROL

9.1 **Reservation.** For the purpose of preserving the values and amenities in and upon the Property and of subjecting the Property to the reservation of architectural control, as hereinafter provided, which reservation is for the benefit of the Property and each Owner of any part thereof, as well as for the benefit of the Declarant, there is hereby reserved to the Board of Directors of the Association which shall act as an architectural control committee, the right and power to disapprove, as to harmony of external design and location in relation to surrounding improvements and topography, all improvements, alterations, painting, redecorating, excavations, landscaping, and all other work which in any way improves or alters the exterior appearance of any Lot or improvements located on any portion of the Property, either permanently or temporarily and whether already constructed or which any person or entity seeks to commence, erect, place or maintain upon any Lot or portion of the Property.

9.2 **Approval.** Owners have the option to submit in writing improvement plans with relevant information to the Board for pre-approval. Before acting on any such request, the Board may require additional information about the proposed improvement or other charge. If the Board fails to disapprove such proposed improvements or other change within thirty (30) days after the receipt of such request and receipt of any additional information requested by the Board whichever occurs last, the same shall be deemed approved. The Board shall have no duty to exercise the power of approval or disapproval hereby reserved, and non-exercise of such power in one or more instances shall not be deemed to constitute a waiver of the right to exercise the power in other or different instances. Likewise, approval of any one set of plans and specifications shall not be deemed to constitute approval of any other or different plans and specifications or of the same at a different time or location.

9.3 **Finality of Decision.** All decisions of the Board shall be final and binding on the applicant and all other Owners or Persons. No Owner or other Person shall have recourse against the Board or any member thereof for approving any plan or for its failure or refusal to do so.

9.4 **Duration.** All of the Property shall be and remain subject to this reservation during the term of the Declaration, notwithstanding the conveyance thereof by Declarant or any subsequent Owner.

9.5 **No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, but the Board may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications, or drawings for any Work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.

9.6 **Limitation of Liability.** The standards and procedures established by this Article are

intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property but shall not create any duty to any Person. NEITHER DECLARANT NOR THE BOARD SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR FOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NOR FOR ENSURING THAT ALL STRUCTURES AND IMPROVEMENTS CONSTRUCTED WITHIN THE PROPERTY ARE OF COMPARABLE QUALITY, VALUE, OR SIZE, OR OF SIMILAR DESIGN. NEITHER THE ASSOCIATION, THE BOARD, NOR ANY MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR SOIL CONDITIONS, DRAINAGE PROBLEMS OR OTHER GENERAL SITE WORK, NOR FOR DEFECTS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED HEREUNDER, NOR FOR ANY STRUCTURAL OR OTHER DEFECTS IN WORK DONE ACCORDING TO APPROVED PLANS, NOR FOR ANY INJURY, DAMAGES, OR LOSS ARISING OUT OF THE MANNER, DESIGN OR QUALITY OF APPROVED CONSTRUCTION OR MODIFICATIONS TO ANY UNIT.

9.7 Enforcement.

9.7.1 Upon written notice from the Board or Declarant, Owners shall, at their own cost and expense, correct any nonconforming condition or remove any nonconforming structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board, Declarant or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Association may assess any costs incurred in taking enforcement action under this Section, together with interest at the maximum rate then allowed by law, against the benefited Unit as a specific Assessment, which shall be in addition to the Base Assessment and Special Assessment with respect to the benefited Unit.

9.7.2 Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained.

9.7.3 Declarant and the Association, acting separately or jointly, may preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article from continuing or performing any further activities in the Property. In such event, neither Declarant, the Association, nor their officers, directors or agents shall be held liable to any Person for exercising the rights granted by this paragraph.

9.7.4 In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Board.

ARTICLE X

USE RESTRICTIONS AND RULES

10.1 Plan of Development: Applicability: Effect. Declarant has established a general plan of development for the Property in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Property, and the vitality of and sense of community within the Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, technology, conditions, needs, and desires within the master planned community and to regulate and control the Area of Common Responsibility. The Property is subject to architectural standards described in Article IX and other provisions of this Declaration governing individual conduct and uses of and actions upon the Property, and the Use Restrictions and Rules promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the Property. All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide or shall be deemed to provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

10.2 Authority to Promulgate Use Restrictions and Rules. The initial Use Restrictions and Rules applicable to all of the Property are attached as **Exhibit "B"** to this Declaration. Subject to the terms of this Article, such initial Use Restrictions and Rules may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to its duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions and Rules set forth on **Exhibit "B."** The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered.

(b) Such action shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by more than 75% of the Class "A" Members and by the Class "B" Member, if such exists.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner specifying the effective date. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

10.3 Owners' Acknowledgment and Notice to Purchasers. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Use Restrictions and Rules may change from time to time. **ALL PURCHASERS OF UNITS ARE HEREBY PLACED ON NOTICE THAT THE**

ASSOCIATION MAY HAVE ADOPTED CHANGES TO THE INITIAL USE RESTRICTIONS AND RULES ON **EXHIBIT "B"**. Copies of the current Use Restrictions and Rules may be obtained from the Association.

10.4 Rights of Owners. In recognition of the flexibility that this procedure for adopting and changing Use Restrictions and Rules provides to address changes in circumstances, conditions, needs and desires within the Property over time, it is appropriate for the protection of each Owner to establish certain parameters within which the Board and the Members may make modifications and additions to the Use Restrictions. Therefore, except as may be specifically set forth in this Declaration (either initially or by amendment) or in **Exhibit "B,"** neither the Board nor the Members may adopt any rule in violation of the following provisions:

10.4.1 Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

10.4.2 Political Signs. No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

10.4.3 Religious and Holiday Displays. No rules shall restrict the rights of Owners to display religious and holiday signs, symbols, and decorations of the kinds normally displayed in residences located in single-family residential neighborhoods, except that the Association may adopt time restrictions. Christmas lights attached to home must be removed by New Years day.

10.4.4 Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

10.4.5 Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

10.4.6 Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

10.4.7 Leasing Units. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; However all leases shall be a minimum of up to 6 months. A copy of all leases and rental agreements shall be retained by the Board. Each lease shall include a copy of Article X and Exhibit "B" of the Declaration of Covenants, Conditions, and Restrictions.

10.4.8 Rights to Develop. No rule or action by the Association or Board shall impede Declarant's right to develop the Property.

10.5 Landscaping. Unless completed by Declarant as part of the Owner's purchase contract for the Lot and Detached Dwelling Unit, the Open Yard of a Lot must be landscaped by the Owner within 90 days of becoming an Owner. The foregoing timing requirement will not apply to the Declarant or any Lots owned by the Declarant as model units or Completed Inventory Lots.

10.5.1 Except for responsibilities assigned to the Association in paragraph 5.1, all landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, decorative features (such as fountains, water features, flag poles, planters, bird baths, sculptures, and walkways) and the like (collectively called, in this Declaration, the "landscaping") if installed on the Open Yard must be maintained by the Owner at all times in clean, safe, neat and attractive condition and repair.

10.5.2 Board approval is generally not required for landscaping in the Private Yard, any above ground decorative features except commercially available playground equipment and a single flag pole in the Private Yard Visible From Neighboring Property must be approved by the Board prior to the installation in the Private Yard.

10.5.2 If an Owner fails to complete the landscaping required by this paragraph in a timely fashion, upon the vote of a majority of the Board of Directors and after not less than thirty days written notice to the Owner the Association shall have the right, in addition to any other remedies permitted under the terms of this Declaration or under applicable law to impose a monetary penalty against the Owner not to exceed \$50.00 per month until the landscaping is completed which shall be both a personal obligation of the Owner as well as a charge and continuing lien upon the lot against which the penalty levied is imposed and the Association may also suspend the Owner's right to vote and right to use any recreational facilities within the common area until such time as the landscaping is completed.

10.6 Owner's Failure to Maintain. If an Owner fails to perform any maintenance and repair required under the terms of this Article X, then, upon the vote of a majority of the Board of Directors and after not less than 30 days prior written notice to that Owner, the Association will have the right (but not the obligation) to enter upon or into that Lot and to provide the required maintenance or make the required repairs. Any entry by the Association or its agents will not be considered a trespass. The cost of these maintenance items and repairs will be an assessment against the applicable Lot and the Owner, will be paid promptly to the Association by that Owner, and will constitute a lien upon that Owner's Lot. The self-help rights of the Association described above are in addition to any other remedies available to the Association

under the Project Documents or Arizona law. Without limiting the rights of the Association described above, if concurrent with delivery of the 30 day written default notice to Owner for failure of the Owner to perform its obligations under this Article X the Association delivers a similar written notice to the holders of all Mortgages on defaulting Owner's Lot, the lien in favor of the Association will constitute a lien for other assessments of the Association under A.R.S. § 33-1807C.

Upon recordation of a Notice and Claim of Lien specifically referring to this Section 10.6, the assessment made for the cost of the maintenance and repairs performed by the Association will be deemed to have been delinquent as of the date of recordation of this Declaration, and the lien for this other assessment will have priority based on the recordation date of this Declaration.

10.7 Fences and Walls.

(a) Construction. Except as may be installed by the Declarant, no boundary wall, enclosure fence, or privacy wall may be constructed on any Lot without the prior approval of the Board. In certain circumstances as more fully described below, the height, design and construction of specific fences and walls will be further restricted. All gates will be no higher than the adjacent fence or wall. For purposes of this Section the fences or walls described above will be referred to generally as a "Fence" or "Fences". Notwithstanding the foregoing, any prevailing governmental regulations will take precedent over these fence restrictions if the governmental regulations are more restrictive. Unless otherwise required under this Section 10.7 or approved by the Board, all Fences and any materials used for Fences dividing, or defining the Lots must be of similar material as existing wall, new masonry or block construction and must be erected in a good and workmanlike manner and in a timely manner. Chain link, wire, wood fences are specifically not allowed.

(b) Encroachments. Declarant may, but shall not be required to, construct boundary Fences upon the dividing line between the Lots. By virtue of accepting a deed for a Lot (whether or not it is expressed in the deed or conveying instrument) or otherwise becoming an Owner, all Owners acknowledge and accept that the boundary Fences installed by Declarant may not be exactly upon the dividing line, but rather may be near or adjacent to the dividing line because of minor encroachments or minor engineering errors or because existing easements or utility lines prevent a boundary Fence from being located on the dividing line. With respect to any boundary Fence not located exactly on a dividing line between Lots but located near or adjacent to the dividing line, an Owner of a Lot will have and is granted a permanent and exclusive easement over any property immediately adjoining the Owner's Lot up to the center line of the boundary Fence for the sole use and enjoyment of that Owner.

(c) Maintenance and Repair of Fences. All Fences constructed upon or near the dividing line between the Lots will be jointly maintained in good condition by the adjoining Lot Owners, and, if damaged or destroyed, repaired at the joint cost and expense of the adjoining Lot Owners. If, however, any dividing line Fence is damaged or destroyed by the act or acts of one of the adjoining Lot Owners or the applicable Owner's Permittees, the Lot Owner that is responsible for the damage will promptly, and within no event later than sixty (60) days of the date of the damage, rebuild and repair the Fence to its prior condition, at that Owner's sole cost and expense. If the Lot Owners fail to timely commence and complete any of these repairs or

maintenance, the Association may cause the maintenance or repairs to be made at the joint and sole cost and expense of the adjoining Owners or Owner, as applicable. Fences that adjoin Common Area as well as a Lot will be maintained by the Association at the Association's cost and expense unless damage to the Fence is caused by any one or more adjoining Owners or applicable Owner's Permittees (in which case the Association will complete the Fence repairs but at the cost of the responsible Owner). Except for repairs necessitated by the negligent acts or omissions of the Association or any other Owner, all Fences constructed on a Lot that adjoin property that is not subject to this Declaration will be maintained and repaired at the sole cost and expense of the Owner upon whose Lot (or immediately adjacent to whose Lot) the Fence is installed. Nothing in the prior sentence, however, will be construed as a waiver or limitation of the right of any Owner to be reimbursed for damage or destruction to a Fence arising out of the act or omissions of any adjoining property owner that is not subject to this Declaration.

(d) Easement for Repair. For the purpose of repairing and maintaining any Fence located upon the dividing line between Lots (or located near or adjacent to the dividing line), a permanent and non-exclusive easement not to exceed five feet in width is created and reserved over the portion of every Lot or Common Area immediately adjacent to any Fence.

(e) Fence Design and Color. The exterior appearance, color, or finish of the side of any Fence that is visible from any street located within or adjacent to the Property may not be modified from the condition unless approved by the Board. The design, material, construction or appearance (including interior and exterior appearance, color and finish) of any Fence may not be altered or changed without the approval of the adjoining Owners, if any, and the Board. Without limiting the preceding portions of this Section, the interior or exterior side of any Fence may not be painted or stuccoed a color or texture other than what was previously and properly in existence without the prior approval of the Architectural Committee.

ARTICLE XI **EASEMENTS**

11.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered on the Unit or the Common Area (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, the members of the New Construction Committee and the Modifications Committee pursuant to Article IX, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties.

Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to perform maintenance and to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to perform such maintenance or cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

ARTICLE XIII **DECLARANT'S RIGHTS**

12.1 Transfer of Declarant Rights. Any or all of the special rights and obligations of Declarant set forth in this Declaration may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Public Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

12.2 Use of Common Area. Declarant and its designees may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, sales offices and storage facilities. Declarant and its designees shall have easements for access to and use of such facilities.

12.3 Easements in Favor of Declarant. Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

12.4 Amendment. This Article may not be amended without the written consent of Declarant so long as Declarant has any rights hereunder.

ARTICLE XIII **GENERAL PROVISIONS**

13.1 Duration.

13.1.1 The covenants and conditions of this Declaration shall run with the land and shall be valid and binding upon all persons owning any of the Units until December 31, 2040, at which time said covenants shall be automatically extended for successive periods of five (5) years each unless terminated as provided herein.

13.1.2 Unless otherwise required by State of Arizona law, in which case such law shall control, this Declaration may be terminated by an instrument signed by the Owners of at least 75% of the Units and by Declarant, if Declarant has any right, title, or interest in any portion of the Property, which instrument is recorded in Public Records of Graham County, Arizona. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

13.2 Amendment.

13.2.1 So long as Declarant owns more than seventy five percent (75%) of the Lots, Declarant may unilaterally amend this Declaration for any purpose thereafter except for amendments made pursuant to Sections 13.2.2 or 13.2.4. The Declaration may only be amended by written approval or affirmative vote of any combination thereof of Owners of not less than seventy five percent (75%) of the Lots.

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

13.2.3 So long as the Declarant is a Member of the Association, any amendment to this Declaration must be approved in writing by the Declarant.

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

13.2.5 So long as the Declarant owns more than seventy five percent (75%) of the Lots, any amendment to this Declaration shall be signed by the Declarant and recorded. At any time the Declarant does not own seventy five percent (75%) of the Lots, any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.4 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 9.3.4 of this Declaration shall be signed by the Declarant and recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the recording of the amendment.

13.2.6 Notwithstanding any other provision of this Declaration to the contrary, this Declaration may not be amended to conflict with the conditions of approval of the Plat by the City unless the Plat is abandoned.

13.3 Severability. Invalidation of any provision of this Declaration, in whole or in

part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

13.4 Dispute Resolution.

13.4.1 Agreement to Resolve Certain Disputes Without Litigation.

As used in this Article XIII, the term "Claim" shall mean (a) any claim, damages or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Area 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 its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; of (b) any claim, damages or cause of action against the Declarant or the Developer or any employee, agent, director, member or officer of Declarant or of the Developer arising out of or in any way related to the development of the Project 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 Developer, all Owners, Lessees, Residents or any other Person 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 any Claim.

13.4.2 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; (c) what Claimant wants Respondent to do or not do to resolve the Claim; and (d) a statement of damages claimed.

In the event the Claimant is the Association and the Claim involves an Alleged Defect (as defined in section 13.4.5), the Association must provide written notice to all Members at least 30 days prior to the Board of Directors meeting to authorize pursuit of a claim and prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against a Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of the Declarant or other Bound Parties to correct such Alleged Defect and the opportunities provided to Declarant or other Bound Parties 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 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 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, (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, (i) names and copies of opinions for each expert who has or will provide an opinion as known at the time of the notice; and (j) 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 contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602(B) of the Arizona Revised Statutes or any subsequent statutory requirements.

13.4.3 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 mediator or mediation service agreed upon by the Parties. The mediation shall be conducted in accordance with the Commercial Mediation Rules of the AAA, within Graham County, Arizona.

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 further 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.

13.4.4 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 Commercial Arbitration Rules of the AAA (the "AAA Rules").

(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 13.4.4, the provisions of this Section 13.4.4 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 13.4.4 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.

(e) Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection (c) above.

(f) Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the Arbitration proceedings in accordance with the Arbitrator's usual hourly rate, unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the Arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the Parties.

(g) Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the Parties shall be held for the purpose of developing a plan for the management of the Arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the Parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious and cost-effective conduct of the proceeding.

(h) Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) Confidentiality. All papers, documents, briefs, written communications, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the Parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all Parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) Final Award. The Arbitrator shall promptly (within sixty (60) days of the conclusion of the proceedings or such longer period as the Parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the Arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the parties against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

13.4.5 Right to Enter, Inspect, Repair and/or Replace.

Within a reasonable time after the receipt by the Declarant or other Bound Party of a Claim Notice, the Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residence constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant or other Bound Party, to correct, repair and/or replace the alleged deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot, or any Improvement constructed on the Common Area or a Lot which is the basis for the Claim (the "Alleged Defect"). In conducting such inspection, testing, repairs and/or replacement, Declarant or other Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Nothing set forth in this Section shall be construed to impose any obligation on the Declarant or other Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant or other Bound Party is not otherwise obligated under applicable law or any

limited warranty provided by the Declarant or other Bound Party in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of the Declarant and other Bound Parties to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Declarant or other Bound Party. In no event shall any statutes of limitations be tolled during the period in which the Declarant or other Bound Party conducts any inspection or testing of any Alleged Defects. The rights of the Declarant and other Bound Parties under this Section shall also extend to their respective employers, agents, contractors, subcontractors and suppliers.

13.4.6 Use of Funds.

In the event the Association recovers any funds from the Declarant 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.

13.4.7 Approval of Arbitration or 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. 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 proceedings and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 13.4.2.

13.4.8 Repurchase Option for Alleged Defect Claims.

Notwithstanding anything in this Declaration to the contrary, in the event any Owner, either directly or through the Association, shall commence an action against the Declarant or the Developer in connection with any Alleged Defects on or to such Owner's Lot, the Declarant or the Developer (or any assignee of the Declarant or the Developer) that constructed and/or sold such Lot shall have the option (but not the obligation) to purchase such Lot as improved with a Residence on the following terms and conditions:

(a) The purchase price shall be an amount equal to the sum of the following less any sums paid to such Owner under any homeowner's warranty in connection with the Alleged Defect:

(i) The purchase price paid by the Owner of the Lot which purchased such Lot from the Declarant or the Developer, following the substantial completion of the Residence on the Lot;

(ii) The value of any documented Improvements made to the Lot by third-party contractors or decorators after the conveyance thereof to the initial Owner that added an ascertainable value to the Property;

(iii) The Owner's reasonable moving costs; and

(iv) Any closing costs, including loan fees and/or "points" incurred by the Owner in connection with the purchase of another primary residence within ninety (90) days after the closing of the repurchase provided for herein.

(b) Close of escrow of the repurchase of the Lot shall not occur later than forty-five (45) days after written notice from the Declarant or the Developer to the Owner of the Declarant's or Developer's intent to exercise the option herein.

(c) Title shall be conveyed to the Declarant or the Developer, as applicable, free and clear of all monetary liens and encumbrances other than non-delinquent real estate taxes.

(d) All closing costs in connection with the repurchase shall be paid by the Declarant or the Developer, as applicable, who is repurchasing the Lot.

(e) Exercise of the repurchase options as provided hereinabove shall constitute full and final satisfaction of all claims relating to the subject Lot, including claims relating to the Alleged Defect. The Owner of an affected Lot (or Association, as applicable) shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

13.4.9 Declarant's Option to Litigate.

Notwithstanding the foregoing provisions of this Article 13.4, Declarant shall, in its sole and absolute discretion, have the right to elect to waive the binding arbitration provisions regarding the disposition of Alleged Defects set forth above and to require that any such claim by a Claimant be resolved in a court of law rather than by the binding arbitration provisions set forth herein or in any purchase contract between Declarant and a Claimant. Declarant shall make such election, if at all, on or before one hundred twenty (120) days following its receipt of the Notice of Alleged Defect.

13.4.10 Arizona Statutory Compliance.

In the event a court of competent jurisdiction invalidates all or part of this Article 13.4 regarding the resolution of Alleged Defects and litigation unfortunately becomes necessary, Declarant, the Association and all Unit 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 UNIT SUBJECT TO THESE COVENANTS, CONDITIONS AND RESTRICTIONS, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFERREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM FOR ALLEGED DEFECT RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 13.4 AND WAIVES THE RIGHT TO PURSUE DECLARANT OR ANY OF DECLARANT AGENTS IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 13.4. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS FOR ALLEGED DEFECTS AS PROVIDED IN THIS ARTICLE 13.4, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A JUDGE OR JURY. THE ASSOCIATION, EACH UNIT 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 UNIT AND EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT HE OR SHE IS GIVING UP ANY RIGHTS AN OWNER MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JUDGE OR JURY RELATING IN ANY WAY TO A CLAIM FOR ALLEGED DEFECT.

13.5 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

13.6 Notice. Except as may otherwise be provided in this Declaration, all notices, demands, bills, statements, or other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by

notice in writing to the Members pursuant to this Section; or

(c) if to Declarant, at the address of Declarant's principal place of business in the State of Arizona or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

(d) if to Declarant, at the address of Declarant's principal place of business in the State of Arizona or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

All notices sent in compliance with the above shall be deemed received on the third day after the date postmarked. Nothing in this Section shall invalidate notice given by personal delivery (which shall include overnight delivery service or courier service) or by any other means, if actually received by the addressee.

13.7 Captions. Titles or captions of Sections contained in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Declaration or the intent of any provision hereof.

13.8 Applicable Law. This Declaration shall be construed and interpreted under the laws of the State of Arizona.

13.9 Exhibits. Exhibits "A and" "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 13.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration that refer to such exhibits.

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

DECLARANT:

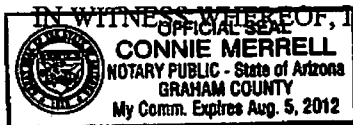
SAFFORD EAST PARK, L.L.C.
an Arizona Limited Liability Company

By *Ivan F. Hancock*
Ivan F. Hancock
and

By *Kathryn T. Hancock*
Kathryn T. Hancock
Managers

STATE OF ARIZONA)
) ss.
County of Graham)

On this 3 day of June, 2009, before me, the undersigned Notary Public, personally appeared Ivan F. Hancock and Kathryn T. Hancock the Managers of Stone Willow Property Owners association, Inc., personally known to me or by satisfactory evidence proven to be the persons whose names are subscribed to the foregoing instrument and acknowledged that he/she executed the same on behalf of the corporation for the purposes therein contained.



Connie Merrell
Notary Public

EXHIBIT A

Property Description

Lots 1 through 60 and Tracts A through F Stone Willow, as recorded in map file No. 409 – 410, dated 10-23-08 of the Graham County, Arizona Records office.

EXHIBIT B

INITIAL USE RESTRICTIONS AND RULES

1. Residential Use. The Units shall be single-family homes only. There may be erected on any one Unit not more than one home and such accessory structures as are defined in A.R.S. § 41-2141, et seq. as are approved by the Board in accordance with applicable zoning law and building codes. Except for the home and accessory buildings, other buildings or structures shall be approved by the Board. Only new homes may be installed/constructed on any of the Units. Each unit must have a garage or carport with storage room.
2. Minimum Livable Area. All single-family residences installed/constructed shall be a minimum width of 22' and contain a minimum livable area of 1200 square feet on grade level with or without a basement. All square footage requirements shall be exclusive of open porches, pergolas or attached garages.
3. Parking. Automobiles and pickup trucks not exceeding one ton may be parked on the side of the home on each Unit provided that any such parking area shall comply with the same set back requirements as the residential dwellings on each Unit. Horse trailers, Recreational vehicles, and boats may be parked in the back or side of each Unit so long as they do not extend beyond the front of the residence on the Unit. All other trucks, vehicles and equipment shall not be kept on any Unit or street for a period longer than 24 consecutive hours. No motor vehicle which is under repair or not in operating condition shall be placed on or permitted to remain on any street or on any portion of any Unit unless it is within an enclosed garage or structure.
4. Motorized Vehicles. No motorized trail bikes, motorcycles or motor driven vehicles, except as those properly licensed for street use, may be driven on streets at any time and then only for egress and ingress in and out of the subdivision.
5. Maintenance. The residence on each Unit and any accessory structure such as a garage or storage room shall at all times be maintained in good condition and periodically cleaned, painted and repaired in order to maintain appearance, functionality and improvements located on the Units. All accessories and structures shall be painted the same color as the home on each Unit.
6. General Upkeep. All clotheslines, yard equipment, garbage cans and service yards shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring parcels and streets. Each Unit's yard, front and back, shall be kept free of overgrowth, weeds, pet excreta, debris, junk, trash and other unsightly items. All porches, driveways, sidewalks and patios must be kept clear of stored items other than outdoor furniture or barbeque grill.
7. Sewage. There shall not be allowed any outside portable lavatories, outside toilets or open plumbing.
8. Tanks. No elevated tanks of any kind shall be erected, placed or permitted on any of the Units

9. Animals. No more than 2 dogs and 2 cats may be kept and must be controlled by fencing, leashes or kept inside the residence. No dog or cat shall be allowed, without human control, to leave the owner's property. Always carry a clean up "doggy bag" when walking the pet to remove promptly the excrement of the pet. If a dog or cat has a litter the number of animals shall be brought back within this limitation within 8 weeks after the birth of the litter. At no time will any unit be used to breed animals or as a permanent or temporary shelter for abandoned or unwanted dogs, cats or animals of any type. All yards shall at all times be maintained in a clean, neat and sanitary condition with animal excreta being removed daily. All odors, smells, flies, insect, and barking shall be controlled by each pet owner so as not to be offensive to anyone residing in Stone Willow.
10. Permanent Structure. No garage, trailer, mobile home, motor home, motor vehicle, or any temporary structure of any nature may be used temporarily or permanently as a residence of any Unit.
11. Commercial Activities. This property is zoned single family residential and uses are governed by the city of Safford a home office is permitted if the use of the same does not present a nuisance or annoyance such as excessive traffic or noise.
12. Signs. No signs shall be erected, placed or permitted to remain on any of the Units, however, a temporary "For Sale" or "For Rent" sign not larger than 24 inches by 36 inches may be placed on any Unit and such sign shall not be deemed a violation of these restrictions. Political signs may be allowed during election season.
13. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Unit, except in covered containers. 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.
14. Diseases and Insects. No Owner shall permit anything or condition to exist upon any Unit which may induce, breed or harbor infectious plant diseases or noxious insects.
15. Roof Mounted Equipment. No broadcasting tower shall be erected on any of the Units, except that residential communication devices may be constructed and maintained within five (5) feet of the end of home opposite the street. No part of antenna shall be more than five feet (5') over the roof line. Beam antennas are not allowed.
16. Lighting. Each Unit is required to have two operating dusk to dawn lights installed on the front of home or garage and to be kept in working condition.
17. Nuisance. No Owner or occupant of any Unit shall engage in any activity or permit any activity, long term or on going, to occur on the Unit which shall result in unusual, loud or obtrusive noise or sounds.
18. Compliance with Applicable Law. All city, county and state laws and ordinances shall be

observed.

19. Landscaping. Except for obligations assigned to the Association in Article V 5.1, homeowners are required to landscape and maintain the front yard of the Units in such a manner as is aesthetically pleasing in keeping with the overall development of the community and shall at all times be maintained, watered adequately, kept neat and orderly, including, replacing dead plants or trees and replacement of materials to maintain landscaping and all other necessary acts which shall be taken by the Unit Owner or occupant to maintain the good appearance of installed landscaping. Landscaping shall consist of the minimum of one tree, and lawn or decorative rock. Carport or garage driveway shall be concrete.

20. Digging. All digging on the premises must be cleared by calling blue stake 1-800-782-5348.