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**FEE #: 2008 - 00884**

01/11/2008 11:33 PAGES: 0002  
FEES: 5.00 4.00 1.00 .00 .00  
REQ BY: LARRY W. SUCIU  
REC BY: Margie Gamache

**FIRST AMENDMENT  
TO  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND EASEMENTS  
FOR  
THE PALMS RV RESORT**

This First Amendment to Declaration of Covenants, Conditions and Restrictions and Easements ("**Declaration**") for The Palms RV Resort is made effective this 9<sup>th</sup> day of January, 2008 by The Palms RV Resort Development, Inc., an Arizona corporation ("**Declarant**") pursuant to Article 16.2(A) of the Declaration recorded on December 13, 2007 at Fee No. 2007-41546, Official Records of Yuma County.

The following Article is hereby amended as follows:

**Article 5 – General Restrictions**

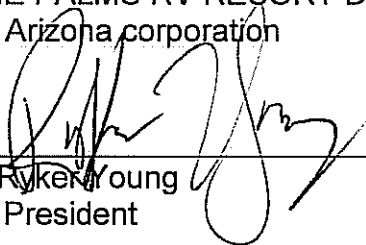
**5.1 Vehicle Requirements**

...

D. Notwithstanding anything to the contrary set forth herein, those Lots more particularly described in **Exhibit D**, attached hereto and incorporated herein by this reference, shall be used only for the installation of Class A Motorcoach Vehicles through September 1, 2011. After September 1, 2011, the Lots described in **Exhibit D**, may be used for any other use or purpose as defined in the Declaration and not be specifically limited for the use or installation of Class A Motorcoach Vehicles.

In witness whereof the undersigned being the Delcarant has executed this First Amendment on this 9<sup>th</sup> day of January, 2008.

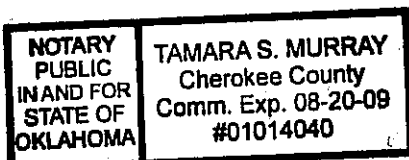
THE PALMS RV RESORT DEVELOPMENT, INC.,  
an Arizona corporation

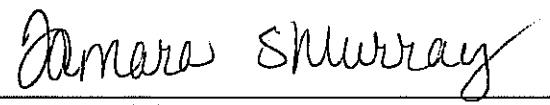
By   
Ryker Young  
Its President

State of Oklahoma }  
                                  }ss.  
County of Cherokee }

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 2008 by Ryker Young, the President of THE PALMS RV RESORT DEVELOPMENT, INC., an Arizona corporation, on behalf of the corporation.

(Seal and Expiration Date)



  
Notary Public

CITY  
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**FEE #: 2007-41541**

12/13/2007 02:36 PAGES: 0072  
FEES: 72.00 4.00 1.00 .00 .00  
REQ BY: LARRY W. SUCIU  
REC BY: NORMA VASQUEZ

When recorded mail to:

Barry L. Olsen, Esq.  
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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND EASEMENTS  
FOR  
THE PALMS RV RESORT**

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# DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE PALMS RV RESORT

This Declaration of Covenants, Conditions, Restrictions and Easements for The Palms RV Resort (the "**Declaration**") is made effective this \_\_\_\_ day of \_\_\_\_\_, 2007, by The Palms RV Resort Development, Inc., an Arizona corporation ("**Declarant**").

## ARTICLE 1 - DEFINITIONS

As used herein, unless the context otherwise requires, the following terms shall have the following definitions.

1.1 "**Act**" means the Arizona Planned Community Act set forth in A.R.S. § 33-1801 *et. seq.*

1.2 "**Annexable Area**" means the land more particularly described on **Exhibit C**, attached hereto and incorporated herein by this reference, together with all improvements situated thereon and all easements and right appurtenant thereto.

1.3 "**Approval**" means prior written approval.

1.4 "**Architectural Committee**" or "**Committee**" means the committee created pursuant to the provisions of Section 7.1 of this Declaration.

1.5 "**ARS**" means the Arizona Revised Statutes.

1.6 "**Articles**" means the Articles of Incorporation of the Association and any amendments thereto.

1.7 "**Assessment Lien**" means the lien granted to the Association to secure the payment of Assessments, monetary penalties, late charges, interest and other fees, charges and amounts owed to the Association.

1.8 "**Assessments**" means the Regular Assessments, Special Assessments, Extraordinary Assessments and Enforcement Assessments levied pursuant to this Declaration.

1.9 "**Association**" means The Palms Yuma RV Resort Lot Owners Association Inc., an Arizona non-profit corporation, its successors and assigns.

1.10 **"Board" or "Board of Directors"** means the Board of Directors of the Association.

1.11 **"Bylaws"** means the Bylaws of the Association, including any amendments thereto.

1.12 **"City"** means the incorporated municipality of the City of Yuma, in the County of Yuma, State of Arizona, and its various departments, divisions, employees and representatives.

1.13 **"Collection Costs"** means all costs, fees, charges and expenditures (including, without limitation, attorneys' fees, court costs, filing fees and recording fees) incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, interest or other amounts payable to the Association pursuant to this Declaration, without regard to whether a law suit is filed or legal action otherwise undertaken by or on behalf of the Association.

1.14 **"Common Areas" and "Common Facilities"** means that certain real property more particularly described on **Exhibit B**, attached hereto and incorporated herein by this reference, which shall be conveyed by Declarant to the Association, and which shall thereafter be owned and maintained by the Association for the common use and enjoyment of the Owners. In addition, the term **"Common Area"** shall include and refer to those Common Areas that are annexed to the Project with additional Lots pursuant to Article 13 of the Declaration.

1.15 **"Common Expenses"** means the actual or estimated costs or expenses incurred or to be incurred by the Association and all financial liabilities of the Association, together with required allocations to reserves. Common Expenses include, without limitation, the following:

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

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

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

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

E. Reasonable reserves as deemed appropriate by the Board of Directors or required by the Project Documents;

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

G. Governmental taxes or assessments paid by the Association;

H. Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Areas or any portion thereof; and

I. Any cost incurred by the Association in furtherance of the purposes of the Association, the discharge of the obligations imposed on the Association by the Project Documents of the Act or the exercise by the Association of any of the powers or rights granted to the Association by the Project Documents or the Act.

1.16 **"County"** means Yuma County, Arizona.

1.17 **"Declarant"** means (A) The Palms RV Resort Development, Inc., an Arizona corporation (the **"Original Declarant"**); (B) any First Mortgagee who succeeds to Original Declarant's interest in all or part of the Parcel by foreclosure or deed in lieu of foreclosure (a **"First Mortgagee Successor"**); and (C) any successor or assignee of any special rights, preferences, and privileges conferred on Original Declarant herein, who is designated by Original Declarant or any First Mortgagee Successor to succeed to the special rights, preferences and privileges in, and who acquires an interest in the Parcel pursuant to, a Recorded instrument.

1.18 **"Declaration"** means this instrument and any amendments hereto.

1.19 **"DRE"** means the Arizona Department of Real Estate and any successors thereto.

1.20 **"FHLMC"** means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

1.21 **"First Mortgage"** means any mortgage or deed of trust on a Lot with first (1st) priority over any other mortgage or deed of trust on the same Lot. Any mortgage or deed of trust on a Lot is referred to as a **"Mortgage"**.

1.22 **"First Mortgagee"** means the holder of any First Mortgage. **"Mortgagee"** means the holder of any **"Mortgage"**.

1.23 **"FNMA"** means the Federal National Mortgage Association, a government sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

1.24 **"GNMA"** means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

1.25 **"Improvements"** means all Common Area improvements, structures and appurtenances thereto of every type and kind including, but not limited to, buildings, walkways, sprinkler systems, tennis courts, swimming pools, saunas, spas, volleyball courts, roads, driveways, parking areas, lighting fixtures, golf course, bath house, laundry room, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, poles, signs, exterior air conditioning and water softener fixtures or equipment.

1.26 **"Invitee"** means any Person whose presence within the Project is approved by or is at the request of a particular Owner, Lessee or Occupant, including, without limitation, family members, guests, employees and contractors.

1.27 **"Lessee"** means any Person who is the tenant or lessee under a written lease for a Lot.

1.28 **"Lot"** means each Lot in the Property, other than the Common Areas, as shown on the Plat.

1.29 **"Manager"** or **"Managing Agent"** means a Person employed by the Board of Directors to manage, operate and maintain the Common Areas and to perform other duties of the Association.

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

1.31 **"Motorcoach Vehicle"** means those vehicles which have been categorized by the Recreational Vehicle Industry Association of America (**"RVIAA"**), and the Family Motorcoach Association (**"FMCA"**), as Class "A", Class "B" or Class "C", and/or factory customized bus conversions. Each vehicle must have a maximum length of forty five (45) feet and a maximum width of one hundred two (102) inches (not including any slide-outs).

As used herein, the term **"Motorcoach Vehicle"** shall not be construed to include any type of truck with a removable room-like addition carried on the truck bed. Nor shall it be construed to include converted school bus shells. No tents or tent campers shall be considered to be Motorcoach Vehicles.

A "Fifth Wheel" or "Tow Behind" trailer which must be pulled by, or attached to, an automobile or truck in order to be moved from place to place, shall also be categorized as a Motorcoach Vehicle. Any such trailer must be factory manufactured and must be completely self-contained, with all the conveniences of a home including, but not limited to, cooking, sleeping and bathroom facilities. In addition, any such trailer must be a minimum of twenty four (24) feet in length and a maximum width of one hundred two (102) inches (not including any slide-outs).

1.32 **"Notice and a Hearing"** means a notice of time and an opportunity for a hearing as provided for in the Project Documents.

1.33 **"Occupant"** means an Owner, guest, invitee, tenant, lessee, sub-lessee, or other person in possession of a Lot.

1.34 **"Owner"** means the Person holding a fee simple interest to a Lot, or the seller of a Lot under an executory contract of sale. "Owner" does not include any party having an interest in a Lot merely as security for the performance of an obligation.

1.35 **"Parcel"** means the land more particularly described on **Exhibit A**, attached hereto and incorporated herein by this reference, together with all improvements situated thereon and all easements and rights appurtenant thereto.

1.36 **"Park Model"** means a travel trailer of less than four hundred (400) square feet that is not self contained and is not capable of "dry camping", as it does not have water storage tanks and must be connected to utilities.

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

1.38 **"Phase"** means the Parcel described on **Exhibit A** hereto, together with each additional portion of the Annexable Area added to the Project pursuant to a recorded Supplement to this Declaration.

1.39 **"Pit Set"** means installation of a recreational vehicle level with the ground with a utility crawl space underneath the vehicle.

1.40 **"Plat"** means that certain plat for The Palms RV Resort Recorded in Book \_\_\_\_\_ of Plats, page \_\_\_\_\_, in the records of the office of the County Recorder of Yuma County, Arizona, which is hereby incorporated herein by this reference, and any amendments, supplements or corrections thereto.

1.41 **"Project"** or **"Property"** means the Parcel and any Improvements constructed upon it at any time, and such additional portions of the Annexable Area as may be later annexed to the Project in accordance with this Declaration.

1.42 **"Project Documents"** means all documents governing the Association and Property, including this Declaration, the Bylaws, the Articles and any Rules and Regulations.

1.43 **"Purchaser"** means any Person, other than Declarant, who by means of a voluntary transfer becomes a Lot Owner.

1.44 **"Quorum"** means more than fifty percent (50%) of the Members.

1.45 **"Record"** or **"Recording"** means placing an instrument of public record in the office of the County Recorder of Yuma County, Arizona, and **"Recorded"** means having been so placed of public record.

1.46 **"Resort Model"** means a manufactured home that exceeds four hundred (400) square feet.

1.47 **"Restrictions"** means all of the terms, provisions and restrictions set forth in the Project Documents.

1.48 **"Rules"** means the rules and regulations, if any, as established and adopted by the Board and/or Architectural Committee as provided for in this Declaration, as amended from time to time.

## **ARTICLE 2 - THE PROJECT**

2.1 **Submission of Parcel.** Declarant is the owner of fee title to the Parcel. Declarant hereby declares that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Parcel and shall be binding upon and inure to the benefit of Declarant and all Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Project or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Project, or any part thereof, agrees to abide by all of the provisions of the Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Project Documents, or as to the compliance of any of the provisions of the Project Documents with public laws, ordinances and regulations applicable thereto.

2.2 **Name of the Project.** The name of the Project created by the Plat and this Declaration is the **"The Palms RV Resort"**.

2.3 **Name of Association.** The name of the Association is the "The Palms Yuma RV Resort Lot Owners Association, Inc."

### **ARTICLE 3 - PROPERTY RIGHTS IN COMMON AREAS**

3.1 **Common Areas and Purposes.** The Common Areas and related Improvements exist solely for the use by the Lot Owners, their Invitees and Lessees. Common Areas may only be used for purposes approved by the Association and in accordance with all reasonable provisions and limitations described in the Project Documents.

3.2 **Easements of Enjoyment.** Each Lot Owner and Declarant (with respect to its ownership and use of unsold Lots) shall have a non-exclusive right and easement for use of the Common Areas.

3.3 **Title to the Common Areas.** Declarant shall convey the Common Areas to the Association prior to Declarant's first sale of a Lot to any Purchaser. The conveyance must be free and clear of all encumbrances and liens (except non delinquent, real property taxes and assessments, covenants, conditions, restrictions, reservations, rights and rights-of-way then of record).

3.4 **Delegation of Use.** Subject to the Project Documents, an Owner may delegate the right to use of the Common Areas to family members, Invitees and Lessees. This right of enjoyment may not be sold or dealt with separately from the Lot to which it is appurtenant.

3.5 **Entrance Gates.** Subject to the easements created in Article 4, the Association shall from time to time determine who may have access through the entrance gates to the Project. Declarant reserves the unrestricted right to entry and use of the private roads and other Common Areas for itself and its successors in interest, until the initial sale of Lots is concluded, for employees, agents, Invitees, licensees, and guests. The Association may make reasonable rules relating to the right of entry through the entrance gates but none unreasonably hindering the entry of Owners or Occupants, their tenants and guests or of prospective purchasers of Lots invited by an Owner. Any entrance gate may be manned or unmanned, as the Board may from time to time elect, in its sole and absolute discretion, and may be abandoned or its hours of manned operation reduced to less than twenty-four (24) hours per day, at the sole discretion of the Board.

### **ARTICLE 4 - ESTABLISHMENT AND RESERVATION OF EASEMENTS**

4.1 **Utility Easement.** There is hereby granted and created an easement upon, across, over and under the Common Areas and the Lots for the installation, replacement, repair or maintenance of utility lines and systems, including, but not limited to, natural gas, water, sewer, telephone, electricity, cable or satellite television,



or other communication lines and systems such as a T-1 internet line. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or Declarant to install and maintain the necessary utility lines, pipes, facilities and equipment on the Common Areas and the Lots, but no sewer lines, natural gas lines, electrical lines, water lines, or other utility or service lines or facilities may be installed or located on the Common Areas or the Lots except as initially designed, approved and constructed by Declarant or as approved by the Board of Directors. This easement shall in no way affect any other Recorded easements affecting the Project.

**4.2 Easements for Ingress and Egress.** There is hereby granted and created easements for ingress and egress for pedestrian traffic over, through and across paths, walks and lanes that from time to time may exist upon the Common Areas. There is also created an easement for ingress and egress for pedestrian and vehicular traffic, including, without limitation, emergency access and utility repair vehicles, over, through and across such roadways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Lot Owners and Occupants and their respective Invitees.

**4.3 Easement for Public Access and Landscaping.** As set forth on the Plat, certain of the Lots are subject to a seven and one-half (7 ½) foot easement for public access and landscaping (the "**PAL Easement**"). The PAL Easement shall be used solely for the installation and maintenance of walkways, pathways, landscaping, vegetation, irrigation, drainage and other common improvements to be constructed by the Declarant on such Lots and maintained by the Association. No structure, improvement, fixture, fence, vehicle, equipment, personal property, trash or rubbish shall be permanently or temporarily constructed, placed, parked or maintained by any Lot Owner within the PAL Easement area, other than such improvements as are constructed by the Declarant or replacements thereof constructed by the Association.

**4.4 Lot Owners' Easements of Enjoyment.** Each Owner shall have a non-exclusive easement for the use and enjoyment of the Common Areas which shall be appurtenant to the Lots and shall be subject to the following provisions:

A. The right of the Association to adopt reasonable Rules governing the use of the Common Facilities.

B. The right of the Association to convey the Common Areas or subject the Common Areas to a mortgage, deed of trust, or other security interest. Any such action by the Association shall be done in the manner and subject to the limitations set forth in this Declaration.

C. The right of the Association to grant non-exclusive easements over all or a portion of the Common Areas if the Board of Directors determines that the granting of such easement(s) is necessary for the development or maintenance of the Common Areas or beneficial to the Owners, Lessees and Occupants.

D. The right of the Association to suspend the right of any Owner to use the Common Facilities as provided in Section 8.10;

E. The other rights of the Association, the Architectural Control Committee, the Board, the Owners and Declarant with respect to the Common Area as may be provided for in this Declaration.

**4.5 Easements in Favor of Lot Owners.** The Common Areas shall be subject to the following easements in favor of the Lots:

A. For the installation, repair, maintenance, use, removal or replacement of ducts, pipes, electrical, telephone, cable, and other communication wiring and cables and all other utility lines and conduits which are part of or serve any Lot and which pass across or through a portion of the Common Areas.

B. For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Lot but which encroach into a part of the Common Areas; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Areas.

**4.6 Association Easements.** On behalf of all Owners, the Association may create and dedicate easements over the Common Areas: (A) for the benefit of all service providers for the installation, repair, replacement and maintenance of sanitary sewers, water, electric, gas and telephone lines and facilities, cable, telephone or master television antenna or satellite or cable television lines or cables, internet provider lines or cables, and drainage facilities, and for ingress to and egress from the Property in connection therewith, and (B) for ingress to and egress from the Property for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles as may be required from time to time to service the Property and the Owners, Lessees and Occupants including, without limitation, United States mail distribution and collection and private or municipal refuse collection, without the joinder or consent of any First Mortgagee or other Person.

**4.7 Utility Easements.** Declarant expressly reserves the right to grant additional easements and rights of way over the Property to utility companies and public agencies, as necessary, for the purpose of constructing, operating or maintaining utilities, including, but not limited to, electricity, cable television, telephone, public sewers, storm drains and pipes, water systems, sprinkler systems, heating and gas lines or pipes ("**System Facilities**"), and any similar public or quasi-public improvements or facilities. Such right of Declarant shall terminate upon the close of escrow for the sale of all Lots in the Project.

A. No such easement shall be granted if it would permanently interfere with the use, occupancy or enjoyment by the Owner of such Owner's Lot or the Common Areas.

B. If it becomes necessary to gain access to any System Facilities through a Lot owned by an Owner other than the Owner of the Lot served by such System Facilities, the Owner of the Lot served by such System Facilities (the "**Benefited Owner**") shall have the right, and is hereby granted an easement therefor, to enter upon such other Lot or to have the utility companies enter upon such other Lot, to repair, replace, or maintain said System Facilities. In the event that any damage shall be proximately caused by such entry, the Benefited Owner shall pay the cost of repairing the damage if the utility company fails to do so.

**4.8 Easements for Maintenance and Repair.** Declarant hereby reserves for the benefit of the Board of Directors, the Association, and all agents, officers and employees of the Association, non-exclusive easements for ingress, egress and access on, over, under, and across those portions of the Project as are reasonably required by the Association to perform its maintenance obligations in accordance with the terms of this Declaration.

**4.9 Encroachment Easements.**

A. Each Lot, as the dominant tenement, shall have and is granted an easement over all adjoining Lots and Common Area, as the servient tenement, for the purpose of accommodating and maintaining any encroachment which occurs due to the engineering errors, errors in original construction, settlement, or shifting of structures, or any other cause as long as the encroachment remains.

B. The Common Area, as the dominant tenement, shall have an easement over adjoining Lots, as the servient tenement, for the purpose of accommodating and maintaining any encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other causes.

C. In no event shall a valid easement exist pursuant to this Section 4.9 in favor of an Owner or the Association if the encroachment occurred due to the willful misconduct of the Owner or the Association respectively.

**4.10 Drainage Easements.** Declarant hereby reserves over the Common Areas and over each Lot in the Project reciprocal easements for drainage according to the pattern for drainage created by the grading plans for the Project approved by the City, as well as according to the actual, natural, and existing patterns for drainage. Each Owner covenants that if it is necessary to alter the drainage pattern over such Owner's Lot for the protection and use of such Owner's Lot, such Owner will do so in a manner which does not harm, or increase the burden upon, adjacent Lots or Common Areas.

4.11 **Easement for Completion of Improvements.** Declarant expressly reserves for its benefit a non-exclusive easement for ingress, egress, access over, under, and across the Property, or any portion thereof, to complete the Improvements which Declarant deems desirable to implement Declarant's development plan.

4.12 **Plat Easements.** The Property as a whole and the individual Lots and the Common Areas are subject to all easements and rights-of-way shown or dedicated on the Plat.

## **ARTICLE 5 - GENERAL RESTRICTIONS**

### **5.1 Vehicle Requirements.**

A. Each Motorcoach Vehicle shall be no older than ten (10) years, unless otherwise approved by the Board of Directors or its designated representative.

B. Each Motorcoach Vehicle must be parked on the Owner's Lot on a concrete pad installed on the Lot by a licensed contractor approved by the Board or its designated representative. The Motorcoach Vehicle shall be backed in on the Lot, and the standard location for each Motorcoach Vehicle when parked shall be to the rear of the parking pad, within the left side (driver's side) of the parking pad.

C. Each Park Model and Resort Model must be installed on the Owner's Lot in a Pit Set manner by a licensed contractor approved by the Board or its designated representative.

D. Notwithstanding anything to the contrary set forth herein, those Lots more particularly described in **Exhibit D**, attached hereto and incorporated herein by this reference, shall be used only for the installation of Class A Motorcoach Vehicles.

### **5.2 Structures on Lot.**

A. Unless approved by the Architectural Committee, the construction or maintenance of any permanent structure on a Lot is prohibited. Owners, their guests, Lessees, Invitees, successors and assigns, acting without specific approval from the Architectural Committee, are prohibited from erecting or placing on any Lot any storage facility or component or any permanent or semi-permanent structure or any Motorcoach Vehicle which is designed as permanent living quarters, which prohibited structures include, without limitation, the following:

(1) Screened rooms, carports, metal awnings, any type of permanent extended overhang, enclosures and/or skirting along the base of a Motorcoach Vehicle;

(2) Any structure placed on a Lot on blocks, or other supports which are permanent or semi-permanent in nature, or any structure with removed hitches;

(3) Any structure not intended to be temporary, that is, any structure not intended to be readily movable; and

(4) Any structure designated, intended or used as permanent living quarters or a primary residence.

B. The provisions of this Article designating the proper use of the Project Lots are not intended to prohibit or limit the utilization of otherwise permissible Motorcoach Vehicles as described above which might also require the ancillary utilization of sewer and water facilities provided at each Lot.

C. The provisions of this Article shall not prevent the erection of tables, benches and grills; provided, however, except as set forth in this Section 5.2.C, no personal property shall be permitted to remain where it can be seen by other Owners or visitors to the Project, except when a Lot is actually in use. This requirement shall not apply to any permissible vehicle or trailer which may be allowed to remain on a Lot even though not in use.

5.3 **Fences.** Any rear or side yard fence placed or constructed upon a Lot shall be no more than three (3) feet in height from the base elevation of such Lot and constructed of block or other materials approved by the Board in accordance with the Rules.

5.4 **Common Areas.** The Common Areas shall be used for vehicular and pedestrian ingress and egress and movement within the Project, recreational use, and such other uses as are expressly provided for herein, and any other use reasonably related to the use of the Lots for Motorcoach Vehicle purposes.

5.5 **Non-Residential Use.** No industry, business, club, trade, association, occupation or profession of any kind and no commercial, religious, educational or other nonresidential activities shall be conducted, maintained or permitted on any Lot or on the Common Areas without Board approval. Notwithstanding the foregoing, Declarant may use Lots owned by Declarant, in addition to the Common Areas, to maintain reasonable construction, sales, leasing operations and marketing on the Property. No Owner may use any Lot in any manner that unreasonably interferes with such use by Declarant.

5.6 **Debris, Trash and Refuse.** Except for small amounts of household trash or recyclable materials kept within a Lot and discarded as provided herein on a regular basis, no garbage or trash or recyclable materials shall be placed or kept within a Lot or other portion of the Project, except within designated trash collection areas (dumpsters)

supplied by the Association and located on the Common Areas. The Board of Directors shall have the right to adopt and promulgate Rules regarding garbage, trash, trash containers and collection. No incinerators shall be kept or maintained in any Lot. Weeds, dead flowers and/or plants, rubbish, debris, and objects or materials that are unsanitary, unsightly, or offensive are not permitted on the Property.

5.7 **Animals.** Pets permitted by the Association ("**Permitted Pets**") shall be kept only in compliance with the Rules promulgated by the Board of Directors from time to time, and must at all times be kept under such care and restraint as not to be obnoxious on account of noise, odor or unsanitary conditions. No animal shall be permitted to run loose and the Owner of each Permitted Pet shall be responsible for cleaning up all waste.

A. No animals, livestock, reptiles, insects, poultry or other animals of any kind, shall be kept on any Lot except that usual and ordinary domestic dogs, cats, fish, and birds (inside bird cages), may be kept as Permitted Pets on any Lot provided that they are not kept, bred, or raised therein for commercial purposes or in unreasonable quantities or sizes.

B. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per Lot; provided, however, that the Board may determine that a reasonable number in any instance may be more or less than two (2).

C. The Board shall have the right to prohibit any animal which constitutes, in the opinion of the Board, a nuisance or risk to any other Owner.

D. Animals belonging to Owners, Occupants, or their licensees, Lessees or Invitees, within the Property, must be kept within an enclosed area, or on a leash, not to exceed six (6) feet in length, held by a Person capable of controlling the animal.

E. Any Owner shall be liable to each and all remaining Owners, their families, guests and invitees, for any unreasonable noise or damage to Person or Property caused by any animals brought or kept upon the Property by such Owner or by such Owner's family, tenants, or guests.

F. It shall be the duty and responsibility of each Owner to clean up after such Owner's animals, which have soiled any portion of the Property or public street abutting the Property. Any person bringing a dog onto the Common Areas shall immediately remove any feces deposited on the Common Areas by the dog.

## 5.8 **Parking and Vehicle Restrictions.**

A. The Association (through the Board and its agents) may establish parking Rules for all parking areas in the Project.

B. The Association has the right and obligation to enforce all parking restrictions and to remove any violating vehicles in accordance with applicable laws.

C. The City shall have the right and obligation to enforce all parking restrictions and to remove any violating vehicles in accordance with applicable laws.

D. Parking is permitted in driveways, as long as it does not obstruct free traffic flow, constitute a nuisance, violate the Rules, or otherwise create a safety hazard.

E. Only passenger motor vehicles may be parked in the parking areas.

F. The following vehicles and trailers shall not be kept on any portion of the Property unless approved by the Board:

(1) Boats, inoperable vehicles, utility trailers, (e.g. automobile and motorcycle trailers) or any vehicle the Board deems a nuisance.

(2) Tow dollies and other vehicle towing devices.

G. No repair, maintenance or restoration of any vehicle shall be conducted on the Property unless approved by the Board.

H. The Association may establish "Parking" and "No Parking" areas within the Common Areas.

5.9 **Alterations.** No Owner shall make any alteration, addition or modification to such Owner's Lot or to any part or portion of the Common Area without the prior written approval of the Board or Architectural Committee, as applicable.

5.10 **Outside Installations.** No radio or television receiving or transmitting antenna or other apparatus ("**Outside Installations**") shall be installed on any external portion of any Lot or in any part of the Common Area without prior written approval by the Board. Reasonable Outside Installations which are constructed as part of authorized Motorcoach Vehicles shall be permitted. It shall be within the Board's sole discretion to determine whether any such Outside Installation is reasonable.

#### **5.11 Signs and Advertising Activities.**

A. Except provided in ARS § 33-1808, no sign or billboard of any kind shall be displayed by any Owner from any Lot or installed in the Common Area without the prior written consent of the Board.

B. "For Sale" signs shall be allowed, provided they meet the requirements set out in the Rules. Only one (1) such sign shall be permitted on any Lot.

C. No advertising or promotional activities which may interfere with the quiet use and enjoyment of the Project by other Owners and guests, such as pennants, lights, amplified sound or music, shall be permitted without the prior written consent of the Board.

D. Nothing herein contained shall prohibit or restrict the Declarant's right to construct and maintain such promotional signs or other sales aid, including a sales office, on or about any portion of the Property, which it shall deem reasonably necessary in connection with its rental program or its sale of Lots now or hereafter owned.

**5.12 Restrictions on Exploration and Removal of Minerals.** The surface area of the Property and to a depth of five hundred (500) feet below the surface may not be used for the exploration or removal of water, oil, natural gas, minerals, hydrocarbons, gravel or any earth substance.

**5.13 Insurance.** Nothing shall be done or kept in any Recreational Vehicle or Lot or on the Common Areas which will increase the rate of insurance for the Project without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept on such Owner's Lot or on the Common Areas which will result in the cancellation of insurance on any Lot, or any part of the Common Areas, or which could be in violation of any law.

**5.14 Lawful Use.** No immoral, improper, offensive, or unlawful use shall be made of any part of the Project. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Project shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

**5.15 Nuisances and Offensive Activity.** No nuisance shall be permitted to exist or operate upon the Project, and no activity shall be conducted upon the Project which is offensive or detrimental to any portion of the Project or any Owner, Lessee or Occupant or which interferes with quiet enjoyment of a Lot by the Owner, Lessee or Occupant thereof.



**5.16 Laundry.** No Owner shall display, hang or store any clothing, sheets, blankets, laundry or other articles (other than swimsuits and/or beach towels) outside a Recreational Vehicle without the prior written permission of the Board of Directors. The foregoing restriction shall not be construed to prohibit an Owner from placing and maintaining outdoor furniture and decorative foliage of a customary nature and appearance on a porch, patio or deck attached to such Owner's Recreational Vehicle.

**5.17 Firearms.** No Owner shall use or permit the use by any Occupant, agent, tenant, Invitee, guest or member of such Owner's family of any firearms, air rifles, pellet guns, BB guns, bows and arrows, slingshots, fireworks or other dangerous weapons, projectiles or devices anywhere on or about the Project.

**5.18 Fires.** No barbeque pits shall be constructed or open fires shall be permitted within a Lot or on the Common Areas without the written consent of the Board of Directors.

**5.19 Leases.** Each lease of a Lot must be in writing and in conformance with all Rules, if any, pertaining to the leasing of Lots. Each lease must cover an entire Lot. The Owner shall be liable for any violation of this Declaration or the Rules by the Lessee or other Persons residing in the Lot and their guests or Invitees and, in the event of any such violation, the Lot Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

**5.20 Time Sharing.** No Lot shall be divided or conveyed on a time increment basis or measurable chronological periods or pursuant to any agreement, plan, program or arrangement under which the right to use, occupy or possess a Lot, or any portion thereof, rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time one hundred eighty (180) consecutive calendar days or less.

**5.21 Hazardous Materials.** No Owner, Lessee or Occupant shall use or keep in a Lot or any Limited Common Area allocated to the Lot any kerosene, gasoline, or inflammable or combustible fluid or material or other hazardous materials, other than limited quantities required for the operation of the Recreational Vehicle or related improvements such as a barbeque grill.

**5.22 Noise Reduction.** In order to maintain the highest level of acoustical privacy possible, the Board of Directors may, from time to time, adopt Rules to reduce levels of noise emission from Lots. Additionally, no loudspeakers shall be affixed to the exterior of a Recreational Vehicle. The use of stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with the Rules. All Owners, Lessees and Occupants shall take all reasonable precautions to lower noise transference between Lots and to abide by the Rules of the Association and any noise reduction ordinance of the City or County.

**5.23 Personal Property.** Articles of personal property belonging to any Lot Owner such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles shall not be stored or kept in any area constituting part of the Common Areas.

**5.24 Utility Lines.** Except for lines, wires and devices existing on the Project on the date this Declaration is Recorded and maintenance and replacement of the same, no lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon the Project, unless they are contained in conduits or cables installed and maintained underground or otherwise approved by the Board of Directors.

**5.25 Further Subdivision, Property Restrictions, Rezoning and Timeshares.** No Owner other than the Declarant shall do any of the following: (A) further subdivide a Lot or separate a Lot into smaller lots or parcels; (B) convey or transfer less than all of a Lot; (C) replat a Lot or combine a Lot with other Lots; (D) record further covenants, conditions, restrictions or easements against any Lot; (E) file with any governmental authority an application for rezoning, variances or use permits pertaining to any Lot; or (F) subject any Lot to any timesharing, cooperative, weekly, monthly or any other type of revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

**5.26 Variances.** By unanimous vote, the Board of Directors may authorize a variance from compliance with any of the provisions of this Declaration, including this Article 5, from time to time, when circumstances such as hardship, aesthetic or environmental considerations may require. A variance must be evidenced in writing and, to be deemed valid, must bear the signatures of at least a majority of the Board or Directors of Directors then serving at the time the variance request is decided. If such a variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to the particular provision hereof covered by the variance, and only for so long as the special circumstances warranting the variance exist, nor shall it affect in any way the Lot Owner's obligation to comply with all governmental laws and regulations affecting the use of such Owner's Lot. The Board of Directors shall have the right to condition the granting of a variance as it may determine in the Board of Director's sole discretion, including, without limitation, making a variance temporary or permanent, or requiring the removal or replacement of a nonpermanent or semi-permanent structure upon the sale or other conveyance of a Lot. Moreover, because of the unique facts and circumstances surrounding each variance request, the granting of a variance in one (1) instance or under certain terms and conditions does not mandate the granting of a variance under similar or related circumstances, terms or conditions if the experiences of the Association and the Project as a whole or the differences in circumstances (however slight) or a variance request from a previously approved variance lead the

Board of Directors, in good faith, to disapprove a variance request in such instance. In no event, may the Board of Directors grant any variance that would create or cause the Association to be in violation of any insurance policy limitation or restriction issued in favor of the Association and its Members as e.g. granting a variance to a Lot Owner to keep a certain breed or type of animal that is expressly prohibited under any applicable insurance policy.

**5.27 Indemnity by Owner of the Association.** Each Owner shall indemnify and hold the Association harmless for, from and against, any and all claims arising from the negligence or willful misconduct of such Owner (or the Owner's family members, relatives, guests or invitees) for damages sustained on the Common Areas, including any costs incurred in defending against such claims.

## **ARTICLE 6 - AGE RESTRICTIONS**

**6.1 Policy.** It is the policy of the Owners, the Association and the Declarant to utilize the Property to provide housing opportunities for older people in conformance with applicable requirements of governmental authorities including, but not limited to, any applicable provisions of the federal Fair Housing Amendments Act of 1988 and any regulations promulgated thereunder. To accomplish that end, this Declaration is being Recorded and will be made available to members of the public from time to time.

**6.2 Occupancy by Adults.** Occupancy of a Lot (A) by one individual who is under the age of fifty-five (55) or (B) by a group of individuals which does not contain at least one (1) member who is fifty-five (55) or older is prohibited, except as provided in Section 6.3 below.

**6.3 Exempt Occupants.** Notwithstanding the provisions of Section 6.2, Declarant may permit occupancy by one (1) or more Persons under the age of fifty-five (55) who are Owners and who bought their Lot(s) from Declarant provided that (A) no such Persons are less than twenty-one (21) years of age and (B) the Lots subject to this exemption at any time shall not exceed twenty percent (20%) of the total number of Lots owned by Persons other than Declarant.

**6.4 Facilities and Services.** The Common Areas shall be operated and maintained with the intent of providing facilities and services specifically designed to meet the physical or social needs of older persons.

**6.5 Interpretation.** The provisions of this Article shall be construed broadly and in keeping with the purposes of complying with any applicable requirements of governmental authorities specifically including, but not limited to, the Fair Housing Amendments Act of 1988.

## **ARTICLE 7 - OWNERS' ASSOCIATION**

**7.1 Organization.** The Association is an Arizona non-profit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Project Documents.

**7.2 Membership.** Each Owner of a Lot, including the Declarant, is an Association Member.

**7.3 Transfer of Membership.** Association membership may only be transferred upon sale or conveyance of a Lot to the purchaser or conveyee. Any Lot title transfer automatically transfers membership in the Association to the new Owner. Except as permitted by ARS § 33-1806, the Association may not impose any fee, assessment or interest relating to a title transfer.

### **7.4 Joint Owner Disputes.**

A. Except as provided in Section 7.5 below, each Lot shall be entitled to one (1) vote. The vote of each Lot shall be cast as a single Lot, without fraction.

B. If joint Owners of a Lot cannot agree about how to cast their vote, they forfeit their right to vote on the matter in question.

C. If a joint Owner casts a vote representing a certain Lot, it will be presumed, for all purposes, to be a vote with the authority and consent of all other joint Owners of the Lot, unless objected to by the other Owners of such Lot at the meeting at which the vote is taken.

### **7.5 Membership Classes and Voting Rights.**

A. Each Lot Owner shall have voting rights when the Owner's Lot becomes subject to Assessments. The Declarant shall have voting rights for all Lots owned by the Declarant.

B. Class A Members -- The Class A Members shall be all Owners, other than Declarant, for so long as there exists a Class B Membership. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

C. Class B Member -- The Class B Member shall be Declarant. The Class B Member shall be entitled to nine (9) votes for each Lot owned.

D. The Class B Membership shall cease and be converted to a Class A Membership immediately upon the first to occur of the following events:

- (1) The sale, by Declarant, of the last Lot in the Project; or

(2) The fifth (5<sup>th</sup>) anniversary of the first (1<sup>st</sup>) sale of a Lot in the Project.

#### **7.6 Voting Requirements.**

A. As long as there exists a Class B Membership, any provision of this Declaration, the Articles or Bylaws which expressly requires the vote or written consent of a specified percentage (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) of the voting power of the Association before action may be undertaken shall require the approval of such specified percentage of the voting power of each class of membership.

B. When the Class B Membership has terminated, any provision of this Declaration, the Articles or Bylaws which expressly requires the vote or written consent of Owners representing a specified percentage of the voting power of the Association before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both the total voting power of the Association and the voting power of the Association residing in Owners other than Declarant.

### **ARTICLE 8 - DUTIES AND POWERS OF THE ASSOCIATION**

**8.1 General Duties and Powers of the Association.** The Association has all of the powers of an Arizona non-profit corporation, subject to the limitations set forth in the Project Documents.

**8.2 Maintenance Responsibilities.** The Association shall:

A. Maintain and repair the Common Areas to assure the maintenance thereof in a clean, sanitary and attractive condition, reasonably consistent with the level of maintenance reflected in the most current budget.

B. Maintain and repair the original landscaping planted on each Lot by Declarant, and subsequent replacements thereto planted by Declarant and/or the Association.

C. Pay all utility bills and charges relating to utilities supplied to each Lot (including basic cable television service), except for the following which shall be the sole obligation of the Owner incurring such costs and charges:

(1) Telephone bills and charges for installation, repair and service including, but not limited to, charges for toll calls and taxes;

(2) Electricity bills, charges and related taxes, and charges for installation, repair and service;

(3) Expanded cable television and internet service and any other services obtained by individual Lot Owners; and

(4) Any applicable City, County or State or Arizona impact fees for utility services.

D. Pay real and personal property taxes or charges assessed against any part of the Common Areas.

E. Have authority to obtain refuse collection, gardening, landscaping, janitorial services, water, sewer, electrical, gas and other services for the benefit of the Common Areas.

F. Have authority to discharge by payment any lien against the Common Areas including, without limitation, property tax liens and assess all costs and fees to the Member(s) responsible for the lien. Such liens may be contested or compromised by the Association, provided that it is paid, or a bond insuring its payment is posted prior to the disposition of any property to satisfy the lien.

G. Have authority to contract with a Managing Agent to perform the duties and responsibilities deemed advisable by the Association, subject to the following requirements:

(1) Any such contract shall not exceed a three (3) year term.

(2) Any such contract shall provide that it may be terminated by either party thereto, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice.

(3) Members of the Association are not liable for any omission or improper act of the Manager.

H. Have authority to adopt reasonable Rules consistent with this Declaration relating to use of the Common Areas and Improvements.

I. Have a duty to maintain all drainage easements and facilities owned by the Association, if any.

J. Have the power to establish and maintain working capital, reserve and/or contingency funds in reasonable amounts to be determined by the Board.

K. The Association responsibility for maintenance and repair does not extend to damage caused by a willful or negligent act by an Owner, family member, guest, Lessee, or Invitee. The cost and responsibility for any and all such repair must be borne by the Person causing the damage, or the relevant Owner.

**8.3 Notice by the Association.** Notice by the Association for any grievance, breach of the Project Documents or failure to meet a time limitation shall be completed by either of the following methods:

A. Personal delivery of the notice to the Occupant of the applicable Lot, and mailing the notice by prepaid first-class certified United States Mail to the Owner (if other than Occupant) of the Lot at the current address for the Owner as stated in the Association's records; or

B. Mailing the notice by prepaid first-class certified United States Mail to the Occupant at the Lot address, and to the Owner (if other than the Occupant) to the current address of the Owner as stated in the Association's records.

**8.4 Insurance.**

A. The Association shall obtain and maintain the following insurance coverages:

(1) Fire insurance for one hundred percent (100%) of the full replacement value of all Common Area Improvements, without deduction for depreciation or coinsurance. To the extent advisable (in the Board's sole and absolute discretion), such policy shall contain the following endorsements and/or provisions:

(a) An extended coverage endorsement;

(b) Vandalism and malicious mischief coverage;

(c) A determinable cash adjustment clause or similar clause with permits a cash settlement covering the full value of the damaged or destroyed Improvements in the event of a decision not to rebuild.

Such policy shall name as insureds the Association, the Owners, Declarant (so long as Declarant is an Owner), and all Mortgagees as their respective interests may appear and may contain a loss payable endorsement in favor of the trustee described in Section 8.4.D.

(2) Comprehensive general liability insurance that covers the Association, the Board, Declarant, any Manager, Owners, Occupants, and their respective family members, guests, invitees and the agents and employees of each

against any liability incident to the ownership or use of the Common Areas. The limits of such insurance shall not be less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence. If obtainable, such insurance shall contain:

(a) A "severability of interest" endorsement to preclude the insurer from denying an Owner's claim due to a negligent act by other Owners or the Association; and

(b) A cross liability to each insured.

(3) Workers' Compensation Insurance in compliance with all applicable laws.

(4) A fidelity bond or insurance covering any Person who handles funds of the Association including, but not limited to, officers, members of the Board of Directors, and employees of the Association or the Manager, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum funds, including reserve funds in the custody of the Association or the Manager, as the case may be, at an given time during the term of each bond.

(5) Officers and directors liability insurance.

(6) Flood insurance on Common Area Improvements if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area.

(7) Any other insurance, which the Board deems appropriate.

B. Insurance policy premiums are a Common Expense to be included in the Regular Assessments.

C. Unless specified herein, the amount, term, coverage, deductible, named insureds and loss payees, shall be determined by the Board and shall satisfy the minimum requirements imposed for this type of Project by FNMA and FHLMC. If the FNMA and FHLMC requirements conflict, the more stringent requirements shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount, coverage and other provisions of such policy shall be determined by the Board in light of what is customary for similar policies on similar projects in the area.

D. All fire and casualty insurance proceeds, payable under Article 8.4.A, subject to the rights of Mortgagees, shall be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the City that agrees in writing to accept such



trust. If repair or reconstruction is authorized, the Association shall have the duty to contract for such work as is provided for in this Declaration.

E. Each Owner must carry a personal liability and property damage liability insurance policy with respect to such Owner's Lot with coverage of One Hundred Thousand and No/100 Dollars (\$100,000.00) or such greater amount as may be required by the Board, and provide the Association with a certificate of insurance or other evidence of such insurance. An Owner may also carry such other insurance as such Owner desires. Each policy obtained by an Owner must include a waiver of subrogation clause acceptable to the Board.

F. Each hazard insurance policy must be written by a carrier who meets FNMA requirements for a "Best Rating".

G. The Association must provide Declarant with copies of all insurance policies.

H. Each insurance policy must require a prior written thirty (30) day notice of modification or termination of coverage from the insurer to the Association, Declarant, all Owners and their Mortgagees, and any other interested party who requests such a notice.

I. At least annually, the Board must review the Association's insurance policies to determine the adequacy of the amounts of the casualty and fire insurance and the fidelity bond. If economically feasible, prior to each annual review the Board shall obtain a current appraisal of the full replacement value of Improvements to the Common Areas (except for foundations and footings) without deduction for depreciation.

J. Association insurance policies shall contain the following provisions, if reasonably possible, as appropriate.

(1) Statements that the policies are primary and non-contributing;

(2) Statements that an Owner's conduct will not constitute grounds for avoiding liability;

(3) A waiver of the carrier's right of subrogation against any Owner or family member, the Association, the Board, the Manager, the Architectural Committee, the Declarant, and any of their agents or employees;

(4) An insurance guard endorsement; and

(5) Any insurance trust agreement will be recognized.

## 8.5 Right of Entry.

A. The Declarant or its authorized agents shall have the right to enter upon any portion of the Project, including the Common Areas and Lots, to construct Improvements to the Property, and to make repairs, and remedy construction defects, provided that such entries shall not unreasonably interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld.

B. The Board of Directors and its authorized agents shall have the right to enter upon any Lot or Common Area to determine compliance with the Project Documents. A Lot may be entered for the purpose of determining compliance with the Project Documents only during reasonable hours, and after the Owner has received three days' notice.

C. The Board of Directors and its authorized agents shall have the right to enter any Lot to cure any violation or breach of the Project Documents provided that the notice requirements in Section 8.3 of this Declaration have been followed.

D. In the event of any emergency involving illness or potential danger to life or property, the Board, or any person authorized by the Board, may enter into any Lot to take corrective action. Such entry shall be made with as little inconvenience to the Owner of the Lot as is practicable, and any damage proximately caused by such entry shall be repaired by the Association as a Common Expense of the Association.

E. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or improvements required to be maintained or repaired by the Owners.

**8.6 Association Performance of an Owner's Obligations.** If an Owner fails to accomplish any maintenance or repair required by this Declaration, the Association has the right, but not the obligation, to cause such maintenance or repair to be accomplished as follows:

A. The Board must give the offending Owner a notice of deficiency ("**Notice of Deficiency**") that outlines the problem and sets a date for a hearing before the Board.

B. A hearing must be held from fifteen (15) to thirty (30) days after the Notice of Deficiency's delivery date and must be conducted as follows:

(1) According to reasonable rules and procedures adopted by the Board;

(2) An Owner may present evidence and cross-examine any person offering evidence against the Owner;

(3) A decision rendered against the Owner must set a reasonable date by which the Owner is to correct the deficiency; and

(4) A committee decision may be appealed to the Board, but a decision by the Board is final.

C. If the deficiency continues after the time limit imposed by the Board, such maintenance or repair may be performed by the Association according to the following procedures:

(1) The Board shall notify the Owner that it intends to perform the necessary maintenance or repair. After such notice, the Owner shall have no more than ten (10) days to select one (1) or more days when the Owner would like the Association to perform such maintenance or repairs;

(2) The Owner must select one (1) or more dates between fifteen (15) and forty-five (45) days from the final day of the ten (10) day notice of action period;

(3) If the offending Owner does not select dates, the Board may select dates to accomplish the work, between twenty-five (25) and fifty-five (55) days from the last day of the ten (10) day notice of action period; and

(4) Unless the Owner and Board otherwise agree, such maintenance or repair may only be performed during daylight hours Monday through Saturday, excluding national holidays.

D. Any Association payments for such maintenance or repair, and reasonable attorney fees incurred by the Association in connection therewith, must be reimbursed by the Owner within thirty (30) days of Association performance. Amounts not reimbursed shall be treated as delinquent assessments.

**8.7 Budget, Financial Statements.** The Association shall prepare and distribute the following budgets and statements to each Association Member and to any Mortgagee that has requested a copy of such documents:

(1) A balance sheet with an accounting date as of the last day of the month nearest to six (6) months from the closing date of the first Lot sale, distributed within sixty (60) days after the accounting date.

(2) An operating statement for the period from the date of the first Lot closing to the above accounting date, distributed within sixty (60) days after the accounting date which includes a schedule of Assessments received or receivable, identified by Lot number and the name of the person assessed.

(3) A proforma operating statement (budget) for each Association fiscal year, from forty-five (45) to sixty (60) days prior to the beginning of the fiscal year, containing the following information:

(a) Estimated revenue and expense on an accrual basis;

(b) The amount of the total cash reserves of the Association currently available for replacement or major repair of Common Improvements and for contingencies;

(c) An itemized estimate of the remaining life of, and the methods of funding to defray the costs of repair, replacement or additions to, major components of the Common Areas and related Improvements for which the Association is responsible;

(d) A general statement setting forth the procedure used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to the major components of the Common Areas and related Improvements for which the Association is responsible.

(4) Within one hundred twenty (120) days after the close of each fiscal year, an annual report consisting of the following items must be distributed by the Association:

(a) A balance sheet as of the end of the fiscal year;

(b) An operating (income) statement for the fiscal year;

(c) A statement of changes in financial position for the fiscal year;

(d) For any fiscal year in which the gross income of the Association exceeds \$75,000.00, a copy of the review of the Annual Report prepared in accordance with cash basis generally accepted accounting principles by a licensee of the Arizona State Board of Accountancy; if the annual report is not prepared by such a licensee, it must be accompanied by an authorized Association officer's certificate that the statements were prepared from the Association's books and records, without independent audit or review.

(5) A statement of the Association's policies and procedures in enforcing lien rights or other legal remedies for default of Assessment payments against the Members must be delivered within sixty (60) days prior to the beginning of the next fiscal year.

#### **8.8 Project Documents.**

A. Within ten (10) days of receipt of a written request from any Owner or Mortgagee, the Association will provide a copy of the following:

- (1) The Project Documents;
- (2) A copy of the most recent financial statement;
- (3) A written statement from an authorized Association representative revealing the amount of any unpaid common interest Assessments levied on the Owner (including information on late charges, interest, and costs of collection which may be a lien on the Owner's interest; and
- (4) The Membership register, mailing addresses, telephone numbers, books of account and minutes of meetings of the Board for any purpose reasonably related to a Member's interest.

B. The Association must make the following documents available for inspection upon request during normal business hours or under other reasonable circumstances:

(1) For Owners, persons designated by Owners as their representatives, lenders, holders, insurers and guarantors of a first Mortgage on any Lot, current copies of all Project Documents, books, records, and financial statements of the Association; and

(2) For prospective purchasers, the documents required by ARS § 33-1805.

C The Board of Directors shall establish reasonable rules with respect to the following:

(1) Notice to be given to the custodian of the records by the Member desiring to make the inspection;

(2) Hours and days of the week when such an inspection may be made;

(3) Payment of the cost of reproducing copies of documents requested by a Member.

The Association fee for the services provided in this Section 8.8 may not exceed the reasonable cost to prepare and reproduce the requested items.

**8.9 Review.** The Board of Directors and the Association must review all of the following documents on at least a quarterly basis:

A. A current reconciliation of the Association's operating and reserve accounts;

B. The current year's actual reserve revenue and expenses compared to the current year's budget;

C. The latest account statements from the financial institutions handling the Association's accounts;

D. An income and expense statement for the Association's operating and reserve accounts.

**8.10 Imposition of Sanctions.**

A. In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Project Documents the Board is authorized to do the following, provided the procedures for notice and hearing described in Section 8.10.B are followed:

(1) Impose reasonable monetary penalties;

(2) Temporarily suspend any or all of any Owner's rights as a Member, including the right to use the Common Facilities; and

(3) Commence a legal action for damages, injunctive relief, or both.

B. Notice and hearing procedures relating to the sanctions imposed pursuant to this Section 8.10 must be made in the following manner:

(1) Notice must be sent by prepaid first-class registered U.S. Mail to the relevant Owner's most recent address in the Association's records at least fifteen (15) days before the proposed effective date of the penalty;

(2) Notice must set forth details of the violation itself, the potential sanctions which may be imposed and the date, time and place of the hearing;

(3) The penalized Owner may be heard, either orally or in writing, at a hearing held at least five (5) days before the effective date of the proposed sanction;

(4) Hearings will be held by the Board of Directors, and their decision is final and binding upon the Owner; and

(5) Following the Hearing, the Board must decide whether or not the Owner should, in fact, be penalized and, if so, what sanction is to be imposed.

C. If an Owner fails to pay or comply with any sanction imposed pursuant to the provisions of this Section 8.10, the Board may seek judicial enforcement of the sanction in any court of competent jurisdiction, and the Owner shall be liable for all costs (collection costs, court costs, attorneys' fees and costs of enforcement). The Board may also elect to treat any unpaid financial sanction as a delinquent assessment.

**8.11 Certain Limitations on Actions Taken by the Association.** The Association may not take any of the following actions unless approved by a majority of the voting power of Association Members other than Declarant:

A. Enter into a contract for a term longer than two (2) years with a third person who furnishes goods or services for the Common Areas or the Association, with the following exceptions:

(1) A management contract with any terms required by the FHA or VA;

(2) A contract with a public utility company if the public utilities commission regulates rates charged for materials or services, provided that the contract term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(3) Prepaid casualty or liability insurance policies of not to exceed three (3) years' duration, provided that the policy permits short-rate cancellation by the insured;

(4) Lease agreements for laundry room fixtures and equipment not to exceed five (5) years duration, provided that Declarant's ownership interest in the lessor under the agreement does not exceed ten percent (10%);

(5) Agreements for satellite dishes or cable television services and equipment, not to exceed five (5) years duration, provided that the Declarant's ownership interest in the entity does not exceed ten percent (10%);

(6) Agreements for sale, lease, installation or services of burglar and fire alarm equipment, not to exceed five (5) years duration, provided that Declarant's ownership interest in any entity involved does not exceed ten percent (10%).

B. Incur capital improvement expenditures for Common Area Improvements in excess of five percent (5%) of the Association's budgeted gross expenses for that fiscal year.

C. Sell Association property with an aggregate fair market value of more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

D. Pay compensation to Association officers, Board members or the Architectural Committee for services performed, except as reimbursement of costs incurred in the conduct of the Association's business.

**8.12 Non-Liability and Indemnification.** Except as specifically provided in the Restrictions or as required by law, no right, power or responsibility conferred on the Board or the Architectural Committee by this Declaration, the Articles or the Bylaws shall be construed as a duty, obligation, or responsibility charged upon the Board, the Architectural Committee, any member of the Board or of the Architectural Committee, any member of the Board or of the Architectural Committee, or any other officer, employee or agent of the Association. No such Person shall be liable to any party (other than the Association) for injuries or damage resulting from such Person's acts or omissions within what such Person reasonably believed to be the scope of his Association duties ("**Official Acts**"), except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. No such Person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct.

**8.13 Commencement of Association Management Responsibility.** The Association's obligations specified in this Article are effective as of the date of the first (1<sup>st</sup>) sale of a Lot in the Project except that the Association maintenance obligations regarding the Common Areas and Common Area Improvements shall not commence until a notice of completion of the Common Area Facilities has been recorded or the Common Area Facilities have been placed in use.



**8.14 Transfer Fee.** Each Purchaser of a Lot from a Person other than the Declarant shall pay to the Association or its Managing Agent immediately upon becoming the Owner of the Lot a transfer fee in the amount set from time to time by the Board of Directors, to compensate the Association or its Managing Agent for the administrative cost resulting from the transfer of a Lot. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Lot Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

**8.15 Reserves.** The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Areas which the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 8.17 or any other funds of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a Reserve Account to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. The Board of Directors may obtain a reserve study on a regularly scheduled basis as established by the Board of Directors to be reasonably necessary, which study shall at a minimum include: (A) identification of the major components of the Common Areas which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (B) identification of the probable remaining useful life of the identified major components as of the date of the study; (C) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (D) an estimate of the total annual contribution necessary to defray the cost of repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. Withdrawal of funds from the Association's reserve account requires the signatures of either: two (2) Board members; or one (1) Board member and an officer of the Association who is not a Board member.

**8.16 Initial Working Capital Fund.** To provide the Association with initial operating funds, each Purchaser of a Lot from the Declarant shall pay to the Association, immediately upon becoming the Owner of the Lot, a sum equal to two (2) monthly installments of the Regular Assessment for the Lot. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**8.17 Reserve Contribution.**

A. Except as provided in Section 8.17.B, each Purchaser shall pay to the Association, immediately upon becoming the Owner of the Lot, a Reserve Contribution to the Reserve Account established pursuant to Section 8.15. The amount

of the initial Reserve Contribution shall be set by the Board of Directors prior to the conveyance of the first (1st) Lot to a Purchaser. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve (12) month period without the approval of Members holding more than sixty-seven percent (67%) of the votes in the Association.

B. No Reserve Contribution shall be payable with respect to: (1) the transfer or conveyance of a Lot by devise or intestate succession; (2) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (3) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board of Directors determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (4) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (5) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

C. All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 8.15. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

**8.18 Unsegregated Real Property Taxes.** Until such time as real property taxes have been segregated by the County Assessor of Yuma County for the Lots, the taxes shall be paid by the Association on behalf of the Owners and each Owner's proportionate share thereof shall be billed to the Owners by the Association and due within fifteen (15) days after receipt of the bill. The Association may levy a Special Assessment against any Owner who fails to pay such Owner's share of any real property taxes pursuant to this Section 8.18. In the event such special Assessment is not paid within thirty (30) days of its due date, the Board of Directors may resort to all remedies of the Association for the collection thereof.

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

## **ARTICLE 9 - COVENANT FOR ASSESSMENT**

**9.1 General Purpose of Assessments.** Assessments may be levied by the Association for improvement and maintenance of the Common Areas, administration of the Property, and to promote the health, recreation, safety and welfare for the common good of all the Owners.

### **9.2 Creation of the Lien and Personal Liability.**

A. Each Lot Owner, except the Declarant, by acceptance of a Deed to a Lot in the Project, whether or not it shall be so expressed in any such Deed, is deemed to covenant and agree to pay to the Association all Regular Assessments, Special Assessments and Extraordinary Charges which are established and assessed as hereinafter provided. Regular Assessments, Special Assessments and Extraordinary Charges shall not apply to lots owned by the Declarant. None of the Lots owned by Declarant shall be subject to Assessments before they are conveyed to Purchasers. Until the Class B membership in the Association ceases and is converted to a Class A membership, the Declarant may, in its' sole discretion, but is not obligated to, elect to pay to the Association such sums as may be necessary, when added to Assessments against Lots owned by Owners other than Declarant, to provide for the operation and maintenance of the Common Areas. After the Class B membership ceases and is converted to a Class A membership, the Declarant shall not have any obligation to pay any sums whatsoever to the Association for Assessments on Declarant owned lots.

B. The Association may not collect an Assessment fee in excess of the amount needed for the purpose levied.

C. Any and all Assessments, together with interest, costs and reasonable attorneys' fees, shall be a personal obligation of the Person who was the Owner of the Lot at the time the Assessment became due (excepting the Declarant). This personal obligation cannot be avoided by abandonment of the Lot or by an offer to waive use of the Common Areas.

D. The personal obligation for delinquent Assessments shall not pass to any successors in title unless expressly assumed by them. If, however, a Notice of Delinquent Assessment is recorded against a Lot, pursuant to Section 9.9.B, subsequent purchasers of the Lot and/or holders of liens against such Lot, although not personally liable for the assessments for which the lien was established, will take the property subject to the assessment lien.

### **9.3 Regular Assessments.**

A. Regular Assessment levied by the Association may be collected and used for maintenance and operation of the Common Areas and related Improvements;

administration of the Property and the Association; establishing reserves for Common Area maintenance and repairs; and other purposes reasonably determined by the Board.

B. Except as provided in "Extraordinary Charges" below, the Board may not increase a Regular Assessment per Lot more than twenty percent (20%) from one fiscal year to the next without the approval of the Owners obtained in accordance with the following procedures:

(1) If there are two (2) membership classes, by the vote or written consent of greater than fifty percent (50%) of Class B Members and sixty-five percent (65%) of the Class A Members; or

(2) If there is only one membership class, by the vote or written assent of greater than fifty percent (50%) of the total voting power of the Association and sixty-seven percent (67%) of the total voting power of Members other than Declarant.

C. Unless otherwise established by the Board, the initial Regular Assessment for the fiscal year preceding the first full fiscal year of operations shall be levied in accordance with the most recent Association Budget.

D. Regular Assessments for the initial partial year must be annualized to determine whether proposed Assessments for the Association's first full fiscal year exceed a twenty percent (20 %) annual increase over the previous Regular Assessment.

#### **9.4 Special Assessments.**

A. The Board may levy Special Assessments in any year to defray the costs of capital improvements to be made on the Property by the Association; repairing, reconstructing or replacing any portion of the Common Areas which has been damaged or destroyed; other special common expenses; and any Association undertaking for which funding is not otherwise provided.

B. Except as provided in "Extraordinary Charges" below, Special Assessments in any fiscal year may not exceed an aggregate five percent (5%) of the Association's budgeted gross expenses for that fiscal year unless approved by the vote or written assent of Members constituting a Quorum.

C. Written notice of any Special Assessment amount must be sent to every Owner and include the date payment is due.

D. Special Assessments will be levied on the same basis as Regular Assessments, to the extent reasonably possible. The provisions hereof with

respect to Special Assessments do not apply to an Assessment levied by the Board against a Member to reimburse the Association for costs incurred in bringing the Member into compliance with provisions of the Project Documents for the subdivision, but any such Assessment shall be subject to the provisions of Section 9.5 of this Declaration.

E. Special Assessment provisions do not apply if individual Extraordinary Charges are levied against an Owner.

#### **9.5 Extraordinary Charges.**

A. The provisions above do not limit Assessment increases for the following Extraordinary Charges

- (1) A court order;
- (2) Repair or maintenance in any area of Association responsibility that poses a threat to personal safety; or
- (3) An extraordinary expense necessary to repair or maintain any area of Association responsibility that could not have been reasonably foreseen by the Board while preparing the proforma-operating budget. In this case, the Board must first pass and distribute a written resolution, together with the Notice of Assessment to all Members, explaining the reason for the charge, and why it could not have been reasonably foreseen.

B. Each Owner agrees to pay the following charges to the Association:

- (1) Extra maintenance and repair costs caused by the willful or negligent act of the Owner or the Owner's family, guests, tenants, lessees or invitees, and not caused by ordinary wear and tear;
- (2) Costs to bring the relevant Lot into compliance with the provisions of the Restrictions.

C. An Extraordinary Charge is the relevant Lot Owner's personal obligation and shall also bind the Owner's heirs, representatives, devisees and assigns), provided, however, the charge does not become a lien against the Lot, and delinquent charges only pass to successors in title if expressly assumed by them.

D. Written notice of an Extraordinary Charge must be delivered to the responsible Owner, and contain the basis and due date for the charge.

E. An Extraordinary Charge not paid when due is subject to the same interest and late charges provided for Delinquent Assessments.

F. An Extraordinary Charge, late charges, interest, collection costs and reasonable attorneys' fees may be established by the Board and enforced by the relevant civil courts.

#### **9.6 Assessment Rate.**

A. Regular and Special Assessments must be fixed at a uniform rate for all Lots so that each Lot owned by any Owner, other than the Declarant, is assessed the same as any other individually owned Lot. Each such Lot is liable for a fraction of the overall Assessment equal to one (1) divided by the total number of Lots subject to Assessment at that time.

B. Declarant owned Lots are not subject to Assessment.

#### **9.7 Commencement Date of Regular Assessments; Due Dates of Assessments.**

A. Regular Assessments shall commence as to all Lots in each phase (a "**Phase**") then included in the Project on the first (1<sup>st</sup>) day of the month following the completion of the Common Facilities.

B. Thereafter, Regular Assessments against Lots in each Phase shall commence on the first day of the month following the first close of escrow for the sale of a Lot in such Phase.

C. Except for the partial first year, Regular Assessments will be levied on a Fiscal Year basis, and due and payable in advance on the first (1<sup>st</sup>) day of every month, or in any other manner established by the Board.

#### **9.8 Assessment Duties of the Board of Directors.**

A. At least thirty (30) days before each Fiscal Year, the Board of Directors must set the Regular Annual Assessment amount for each Lot, and prepare an annual roster of Lots that includes relevant Assessments and is made available for inspection by any Owner during normal business hours.

B. Written notice of Regular Assessments must be sent to every Owner as follows annually and at least thirty (30) days before the applicable Fiscal Year. Such notice shall specify when installment payments are due and payable.

C. If for some reason a Regular Assessment is not established as required, terms of the Regular Assessments in place for the previous year

will continue unchanged until the Board enacts a new or supplementary Assessment.

D. Upon demand by an Owner (or Mortgagee) whose Lot is liable for any Assessment, the Association will furnish a written certificate (the "**Certificate**") signed by an Association officer that sets forth the nature and amount of the Assessment(s), due dates and whether any delinquency exists, and this certificate constitutes conclusive evidence of any payment of Assessments. The Board may impose a reasonable charge for issuing the Certificate.

#### **9.9 Non-Payment of Assessments: Delinquency and Remedies of the Association.**

A. An Assessment is delinquent if not paid within fifteen (15) days after the due date. If an Assessment is delinquent, the Association may recover all of the following related costs, which constitute an assessment against such Owners Lot ("**Enforcement Assessment**"):

(1) A reasonable late charge in an amount fixed by the Board, not to exceed the greater of Fifteen and No/100 Dollars (\$15.00) or ten percent (10%) of the amount of the unpaid penalty, or such rate as may be established by the Board, or the maximum allowed by law.

(2) Reasonable Collection Costs and attorneys' fees; and

(3) Interest on all costs and charges at an annual rate of twelve percent (12%), or such rate as may be established by the Board, commencing thirty (30) days after the Assessment is due.

B. Delinquent Assessments and related Collection Costs will be a continuing lien on the relevant Lot when a notice of the delinquent assessment is recorded against an Owner's fee interest in a Lot ("**Notice of Delinquent Assessment**"). This lien shall be prior to all other monetary liens encumbering the Owner's fee interest except:

(1) Taxes, bonds, assessments and other levies that are superior by law; and

(2) The lien of any first Mortgage upon one or more Lots made for value and in good faith. The priority of such first Mortgage is further described in Article 9 of this Declaration.

C. In addition to all other legal rights and remedies available to it, the Association may enforce the collection of any amounts due under this Declaration by any of the following means:

(1) Bring legal action directly against an Owner who is personally obligated to pay the delinquent Assessment and charges without waiving any lien security;

(2) Judicially foreclose the lien against the Lot, subject to and in the manner provided in ARS § 33-1807;

(3) Through authorized agents, bid on the Lot at the foreclosure sale to acquire, hold, lease, mortgage or convey the Lot.

#### **9.10 Mortgagee Protections.**

A. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first Mortgage that encumbers all or any portion of the Project, or any Lot, made in good faith and for value.

B. No such lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien.

C. The foreclosure of any Assessment lien created pursuant to the provisions of this Declaration shall not operate to affect or impair the lien of any first Mortgage.

D. On foreclosure of a first Mortgage, any lien for Assessments, and any installments that have accrued up to the time of such foreclosure, shall be subordinate to the lien of the first Mortgage. The foreclosure-purchaser shall take title to the Lot free of the Assessment lien or installments that have accrued up to the time of the foreclosure sale. On taking title to the Lot, the foreclosure-purchaser shall be obligated to pay only assessments or other charges levied or assessed by the Association that became due or payable on or after the foreclosure-purchaser acquired the Lot. Assessments or charges levied subsequent to such foreclosure sale may include previously unpaid Assessments or charges, provided all Owners, including the foreclosure-purchaser and his successors and assigns, are required to pay their proportionate share of such unpaid assessments and charges.

**9.11 Waiver of Exemptions.** Each Owner waives (to the extent permitted by law) the benefit of any Arizona homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.

**9.12 Priority of Assessment Lien.** The Assessment Lien shall have priority over all liens, other interests and encumbrances, except for: (1) liens and encumbrances



Recorded before the Recording of this Declaration; (2) liens for real estate taxes and other governmental assessments and charges; and (3) the lien of any First Mortgage or seller's interest in a first (1st) contract for sale Recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any assessments and charges against the Lot which accrue prior to such sale or transfer, shall remain the obligation of the defaulting Lot Owner.

## **ARTICLE 10 - ARCHITECTURAL CONTROL**

**10.1 Architectural Review Committee.** An Architectural Review Committee, sometimes referred to herein as the "**Architectural Committee**" or the "**Committee**", is hereby created. The Architectural Committee shall consist of three (3) members. The initial members of the Architectural Committee shall be appointed by Declarant to serve until one (1) year after the original issuance by DRE of the Final Subdivision Public Report ("**Public Report**") for the first phase of development of the Project ("**First Anniversary**"). After the First Anniversary, the Board may appoint and remove one (1) member of the Architectural Committee, and Declarant shall have the right and power to appoint or remove a majority of the members of the Architectural Committee or to fill any vacancy of such majority until the earlier to occur of:

A. Close of escrow for the sale of the Lot that represents the ninetieth (90<sup>th</sup>) percentile of the Lots in the Project, including all Phases; or

B. The Expiration of five (5) years following the date of the original issuance of the Public Report for the first phase of development of the Project, after which the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Architectural Committee members appointed by the Board must be Members of the Association, but Architectural Committee members appointed by Declarant need not be Members of the Association. Board members may also serve as Architectural Committee members. Any member of the committee may be removed in accordance with this Section 10.1 with or without cause.

### **10.2 Review of Plans and Specifications.**

A. No Owner shall commence or perform any planting, construction, alteration, removal, relocation, demolition, repainting, addition, modification, decoration, redecoration, or reconstruction of any landscaping, structure of Improvement of any kind on such Owner's Lot until the plans and specifications, therefore, showing the nature, kind, shape, height, width, color, materials and location of the same, and any

other information required by the Committee, shall have been submitted to the Committee and approved in writing by the Committee.

B. The Owner submitting the plans ("**Applicant**") shall obtain a written, dated receipt for the plans and specifications from an authorized agent of the Committee.

C. The Committee shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby will not be in violation of any of the provisions of this Declaration or detrimental to the appearance of the surrounding area of the Property as a whole, that the appearance of any structures affected thereby will remain in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association.

D. The Committee may condition its approval of proposals or plans and specifications for any improvement upon any of the following:

(1) Upon the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be recorded against the Property as a result of such work;

(2) Upon such changes therein as the Committee deems appropriate;

(3) Upon the Applicant's agreement to complete the proposed work within a statement period of time.

E. The Committee may issue rules or guidelines setting forth procedures for the submission and approval of plans for Approval.

F. The Committee may require such detail in plans and specifications submitted for its review as it deems proper.

G. The Committee shall exercise its best efforts to transmit its decisions, and the reasons for its decisions, to the Applicant at the address set forth in the application for Approval within forty-five (45) days after receipt by the Committee of all materials required by the Committee.

H. The Applicant shall meet any review or permit requirements of the City prior to making any alterations or Improvements permitted hereunder.

I. Declarant, and any Person to whom Declarant may assign all or a portion of its exemption hereunder, need not seek or obtain Committee Approval

of any Improvements constructed on the Property by Declarant or such Person, as the case may be.

**10.3 Meetings of the Committee.** The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the Committee, or the written consent of a majority of the Committee, taken without a meeting, shall constitute an act of the Committee.

**10.4 No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications for any work done or proposed shall not be deemed to constitute a waiver of the Committee's right to withhold Approval of any similar proposals or plans and specifications which are subsequently or additional submitted for Approval or consent.

**10.5 Compensation of Committee Members.** The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

**10.6 Correction of Defects.**

A. The Committee or a duly authorized representative of the Committee may at any time inspect any work for which Approval of the Committee is required under this Article 7 ("**Work**").

B. The Committee shall have the right to require the Owner to take any action as may be necessary to remedy any noncompliance with the proposals or plans and specifications approved by the Committee, or with the requirements of this Declaration ("**Noncompliance**").

C. The Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance, shall terminate sixty (60) days after the later to occur of the following events:

(1) Completion of the Work as provided in the Committee-approved plans and specifications; and

(2) Written notice from the responsible Owner to the Committee that the Work has been completed.

This time limit for inspection and notification by the Committee shall be extended indefinitely if either of these conditions has not occurred. If the Committee fails to send a Notice of Noncompliance to an Owner before this time limit expires, the work shall be deemed to comply with the approved plans and specifications.

**10.7 Remedies.** If an Owner fails to remedy any Noncompliance within sixty (60) days from the date of notification from the Committee, the Committee shall notify the Board in writing of such failure. The Board shall then give the offending Owner a Notice of Deficiency which outlines the problem and sets a date for a hearing before the Board or its appointed Committee to determine whether there is Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. The offending Owner may present evidence and cross examine any person offering the evidence against the Owner at the hearing. If the Board determines that a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that the Board notifies the offending Owner of its ruling. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may record a Notice of Noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance. If the Board elects, in its discretion, not to commence litigation to remedy any Noncompliance, any Owner may commence such an action in the Owner's own name.

**10.8 Scope of Review.**

A. The Committee shall review all plans submitted to it for any proposed improvement, alteration, or addition, on the basis of aesthetic considerations, consistency with this Declaration, and the overall benefit or detriment which would result to the immediate vicinity and the Property generally.

B. The Committee may consider the impact on views and reasonable privacy right claims as factors in reviewing any proposed landscaping, construction, or other improvement. However, Declarant does not warrant any protected view within the Property and no Owner or Lot is guaranteed with the existence or unobstructed continuation of any particular view.

**10.9 Limitation of Liability.** The Committee shall review plans and specifications pursuant to this Article solely in order to ensure that the conditions for its approval set out in this Article have been satisfied. No Approval of any such plans and specifications by the Committee, or anyone else on behalf of the Association shall in any way constitute or be construed as any sort of representation with respect to the soundness of the proposed construction work or the appropriateness of the plans and specifications for any particular purpose (or for any purpose whatsoever). The Declarant, Association, Board, and Committee, shall not be liable in damages to anyone submitting plans or specifications for such review, or to any Owner of property affected by the results of such review (or any Approval or disapproval thereof) whether by reason of mistaken judgment, negligence, or nonfeasance arising out of or in connection with such review, approval or disapproval; by reason of failure to approve or disapprove any such plans or specifications; or otherwise.

#### **10.10 Accountability to the Board.**

A. Any and all final decisions of the Architectural Committee may be appealed to the Board of Directors. Any such appeal must be submitted in writing ("**Notice of Appeal**") to the Board or any member thereof within fifteen (15) days after the date the appealing Member receives notice of the Committee's decision. The Notice of Appeal shall specifically state the appealing Member's grounds for appeal. The Board of Directors shall promulgate Rules for reviewing Notices of Appeal. The decision of the Board with respect to all appeals shall be final and determinative.

B. In addition to the foregoing, any final decision of the Committee may be reversed, revised or supplemented by the Board, whether or not a Member has appealed such decision, by sending written notice thereof ("**Notice of Reversal**") to the Committee (or any member thereof) and to the Member(s) immediately affected by the Board's decision, within ten (10) days of receiving notice of the Committee's decision. The Board's decision to overturn, revise or supplement a decision of the Committee shall be final and determinative.

### **ARTICLE 11 - DAMAGE AND DESTRUCTION TO IMPROVEMENTS**

#### **11.1 Alternatives.**

A. If there is a total or partial destruction of Common Area Improvements, and if the available proceeds of the insurance carried pursuant to Section 8.4, cover not less than eight-five percent (85%) of the costs of repair and reconstruction, the Association will repair and substantially restore the Common Area Improvements to the same manner as existed before and levy a reconstruction Assessment equally against the Owners to make up the balance of costs in accordance with Section 6.

B. If insurance proceeds cover less than eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners unless, within ninety (90) days of the date of destruction, at least sixty-seven percent (67%) of the Owners (other than Declarant) agree to either:

(1) To rebuild in a less expensive manner than substantial replacement, utilizing all available proceeds, in which case the Association will levy a reconstruction Assessment equally against the Owners to raise any rebuilding cost in excess of insurance proceeds; or

(2) Not to rebuild, in which case all the insurance proceeds for the damage, net of the expenses of clearing debris and making the damaged area aesthetically pleasing, are at the Association's discretion to perform its functions

according to the Restrictions or to distribute equally to the Owners (subject to the rights of Mortgagees of record).

#### **11.2 Reconstruction Assessments for Reconstruction of the Improvements.**

A. Reconstruction Assessments will be due:

- (1) In a lump sum or in installments; and
- (2) On any date(s) the Association designates within twenty (20) years.

B. To cover the difference between the cost of restoring damaged Improvements and the available insurance proceeds, the Association may borrow money secured by:

- (1) An assignment of its right to collect such reconstruction Assessments; or
- (2) A pledge of its interest in any assets.

**11.3 Damage to Lots.** If a Lot Improvement is damaged by fire or other casualty, the relevant Owner must proceed with due diligence to repair or reconstruct the Improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or as authorized by the Architectural Committee. Repair or reconstruction must commence within ninety (90) days after damage or destruction, and must be completed within one hundred and eight (180) days after such date, subject to delays that are beyond the Owner's control. Notwithstanding the foregoing, the Owner must immediately take reasonable steps as required to make safe any hazardous conditions resulting from the damage or destruction.

### **ARTICLE 12 - EMINENT DOMAIN -- COMMON AREA**

#### **12.1 Condemnation.**

A. If any portion of a Common Area is to be condemned or sold by eminent domain, the Board (or its designated agent) will:

- (1) Represent Association Members in the proceedings;

(2) Immediately give notice of the condemnation threat to all Mortgagees, insurers and guarantors of First Mortgages who have filed written requests for notices;

(3) Have sole discretion regarding distribution of any related award (subject to the prior rights of Mortgagees under recorded Mortgages); and

(4) Be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

B. No Member may challenge the Board's good faith in performing its duties under this Article.

C. If only part of a Common Area is affected, the rules regarding restoration and replacement of the Common Area and Improvements apply as if in the case of destruction.

#### **12.2 Awards.**

A. Any award(s) received shall be paid to the Association subject to the rights of Mortgagees under recorded Mortgages encumbering any portion of the Property.

B. If any of the net condemnation award is not used to restore the remaining Common Area, the Association will use the award to perform its functions pursuant to the Project Documents or distribute the award equally to the Owners subject to the rights of Mortgagees of record.

### **ARTICLE 13 - MORTGAGEE PROTECTION**

#### **13.1 Subordination of Lien and Foreclosure.**

A. Any lien created or claimed in this Declaration;

(1) Is subject and subordinate to the rights of any first Mortgage (meaning a Mortgage with first priority over other Mortgages) that encumbers any portion of the Property made for value in good faith; and

(2) May not impair or invalidate the obligation or priority of a first Mortgage unless expressly subordinated in writing by the Mortgagee.

B. Foreclosure of any Assessment lien created by this Declaration shall not affect or impair the lien of any first Mortgage encumbering any portion of the Property made for value in good faith.

C. Upon foreclosure of a first Mortgage, the purchaser of the property foreclosed upon (the "**Foreclosure Purchaser**") shall not be liable for unpaid assessments, fees, late charges, fines or interest levied or assessed by the Association against the subject property prior to the date the foreclosure Purchaser acquires title to the subject property. However, the foreclosure Purchaser shall be liable for its pro rata share of all such Assessments, fees, charges, fines and interest which accrue or become due after the Foreclosure Purchaser acquires title to the subject property.

**13.2 Mortgagees not Required to Cure Certain Breaches.** Any first Mortgagee who acquires title to a Lot by foreclosure or by a deed in lieu of foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure, provided, however, this Section 13.2 shall not modify in any way the provisions of Section 13.1, above.

**13.3 Estoppel Certificate.** At the request of any Mortgagee, the Association will report unpaid Assessments due from the relevant Owner.

**13.4 Effect of Breach of Declaration.** No breach of any provision of this Declaration shall invalidate the lien of any first Mortgage made in good faith and for value. The provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise.

**13.5 Mortgagee's Right to Attend Meetings.** A Mortgagee under a recorded Mortgage may appear at Association and Board meetings, but is not eligible to vote.

**13.6 Exemption from Right of First Refusal.**

A. No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Lot, unless all Mortgagees of the Lot provide Approval thereof.

B. Any right of first refusal or option to purchase a Lot that may be granted to the Association (or other party) may not impair the rights of a first Mortgagee to do any of the following:

- (1) Foreclose or take title to such Lot, pursuant to the remedies provided in the Mortgage;
- (2) Accept a deed to such Lot in lieu of foreclosure in the event of default under the Mortgage; or
- (3) Sell or lease such Lot acquired by the Mortgagee.



### **13.7 Restrictions on Certain Changes.**

A. First Mortgage holders of Lots that have at least sixty-seven percent (67%) of the votes of all Lots encumbered by the First Mortgages, or sixty-seven percent (67%) of the Owners (other than Declarant) must give written Approval before the Association may, by act or omission, do any of the following:

(1) Abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Area unless due to the annexation of additional phases. The granting of easements, as permitted by this Declaration, shall not be deemed to be a transfer within the meaning of this clause.

(2) Alter the method of determining Assessments or other charges levied against an Owner, unless the change is due to the annexation of additional Phases.

(3) Waive or abandon enforcement or any regulations concerning architectural design, exterior appearance and maintenance of structures on the Lots and Common Areas.

(4) Fail to maintain fire and extended coverage insurance for the Common Areas on a current replacement cost basis of one hundred percent (100%) of the insurable value.

(5) Use hazard insurance proceeds for losses to the Common Areas for other than repair, replacement or reconstruction of the relevant Common Area.

B. In addition to the requirements of Section 13.7.A, and, unless a greater percentage is expressly required by this Declaration, the Articles, Bylaws or by law, the prior written consent (or deemed consent, as provided below) of first Mortgages of fifty-one percent (51%) of all Lots encumbered by First Mortgages shall be required to add or amend any material provision(s) of the Declaration, Articles, Bylaws or Plat which concern:

(1) Voting rights;

(2) Rights to use the Common Areas, and reallocation of interests in the Common Area (including Exclusive Use Common Areas, if any);

(3) Reserves and responsibility for maintenance, repair and replacement of the Common Property;

(4) Lot boundaries;

- (5) Owner's interests in the Common Area;
- (6) Lot leasing;
- (7) Establishment of self-management by the Association where professional management has been required by any beneficiary, insurer or guarantor of a first Mortgage;
- (8) Annexation or de-annexation of real property;
- (9) Assessments, Assessment liens, or the subordination of such liens;
- (10) Insurance provisions or the disposition of any money received from condemnation proceedings;
- (11) Imposition of a right of first refusal or similar restriction of an Owner's right to sell, transfer or otherwise convey the Lot;
- (12) Restoration or repair of the Project after hazard damage or partial condemnation;
- (13) Validity of the priority of encumbrances or the rights and protection granted to Beneficiaries, insurers and guarantors of first Mortgages;
- (14) Action to terminate the legal status of the Project after substantial destruction or condemnation; or
- (15) Any provisions that are for the express benefit of first Mortgagees, insurers or governmental guarantors of first Mortgages.

C. A first Mortgagee's Approval will be considered granted under Section 13.7.A or 13.7.B if a negative response is not delivered to the Board within sixty (60) days after the Board mails a written request for Approval of any proposed addition or amendment, provided such request for Approval is delivered by certified or registered mail, return receipt requested.

**13.8 Inspection of Association Books and Records.** First Mortgagees shall have the right to examine the books and records of the Association, and the right to require the submission of financial data concerning the Association, including annual audit reports, budgets, and operating statements.

### **13.9 Condemnation Awards and Insurance Proceeds.**

A. First Mortgagees have priority over any other party (including the Owner) pursuant to their Mortgage in the event of a distribution to Owners of insurance proceeds or condemnation awards for losses to, or any taking of, Lots or Common Areas. Any provision to the contrary in this Declaration, the Bylaws, or other Project Documents is to such extent void.

B. All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses acceptable to the affected first Mortgagee, naming the Mortgagees as their interests may appear.

**13.10 Insurance.** All applicable fire and physical loss (or extended coverage) insurance policies must provide at least the lesser of:

A. Compensation equal to the full amount of the damage or loss; or

B. Compensation to the First Mortgagee (under the Mortgage encumbering any Lot) equal to the full amount of the unpaid principal balance of the Mortgage loan.

### **13.11 Payments by Mortgagees.**

A. First Mortgagees may pay the following jointly or severally:

(1) Taxes or other charges in default which may be a charge against any part of the Common Areas; and

(2) Overdue premiums on hazard insurance policies, or premiums for new hazard insurance coverage on the lapse of a policy for the Common Areas.

B. Upon making any such payments, the Association:

(1) Owes immediate reimbursement to the First Mortgagee making such payments; and

(2) Must, upon the payor Mortgagee's request, execute an agreement that reflects the First Mortgagee's entitlement to such reimbursement.

### **13.12 Filing of Notice; Notices and Approvals.**

A. Each Mortgagee, insurer and guarantor of a First Mortgage encumbering any Lot upon filing a written request for notification with the Board is entitled to written notification from the Association of:

(1) Any condemnation or casualty loss which affects a material portion of the Project or the Lot(s) securing the respective First Mortgage; and

(2) Any delinquency of sixty (60) days or more in the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the respective First Mortgage, which notice each Owner hereby consents to and authorizes; and

(3) A lapse, cancellation, or material modification of any policy of insurance or fidelity bond maintained by the Association; and

(4) Any proposed action of the Association which requires consent by a specified percentage of First Mortgagees.

B. A Mortgagee notice (or request) remains in effect as long as the relevant facts remain substantially unchanged.

C. A Mortgagee's rights may not be affected by failure to deliver notice to the Board.

D. First Mortgagees who file a written request will be given thirty (30) days' written notice from the Board prior to:

(1) Abandonment or termination of the Association;

(2) The effective date of any proposed, material amendment to the Project Documents; and

(3) The effective termination date of any professional management agreement of the Property following a decision of the Owners to assume self-management.

E. First Mortgagees will be given immediate notice:

(1) Following damage to the Common Areas if the reconstruction cost exceeds Ten Thousand and No/100 Dollars (\$10,000.00);

(2) Following damage to a Lot if the reconstruction cost exceeds One Thousand and No/100 Dollars (\$1,000.00); and

(3) When the Board learns of a threatened condemnation proceeding or proposed acquisition of a portion of the Property.

### **13.13 Governmental Financing Programs.**

A. If Declarant chooses a Property financing program that involves Mortgage insurance issued by a government agency (such as the FHA or VA), or involves first Mortgage sales to a government agency (such as FHLMC or a FNMA-type program), the Association and Owners must take reasonable steps to satisfy the program's existing requirements.

B. These steps include the requirement that, when available, the Association must maintain certain types of insurance coverage issued by carriers who meet the requirements of the relevant governmental financing program.

C. Hazard insurance policies required by this Section must contain (or attach) the standard Mortgagee clause commonly accepted by private institutional Mortgage investors for similar projects in the locale (except when a separate policy covering the Common Areas is maintained).

## **ARTICLE 14 - SPECIAL DECLARANT RIGHTS**

14.1 **No Amendment.** Until the sale to a Purchaser of the last Lot owned by the Declarant, neither this Declaration, the Articles, Bylaws or Association Rules may be amended in any way which would eliminate, modify or impair any rights granted to the Declarant or any party connected thereto under the terms of this Declaration, the Articles, Bylaws or Association Rules including, but not limited to, the right to maintain sales offices, management offices, signs advertising the project and Lots for sale, and models, use of the Common Area for the purpose of making improvements within the Property, use of any Lots owned by the Declarant, and the voting rights of the Declarant as set forth in Article 7 of this Declaration.

14.2 **Lot Rental and Resale.** For as long as the Declarant offers Lots for initial sale, the Declarant may operate both a Lot rental business (Declarant or Owner owned) and a Lot resale business (Owner owned) within the Project. Lot Owners will be provided the opportunity to contract with the Declarant or the Owner for the sale or lease of their Lots or may elect to contract with others for those same services.

14.3 **Office Space.** Until December 31, 2023, the Association will provide the Declarant with adequate office and operational space to operate the rental and resale businesses and will provide all necessary utility services, at no charge to the Declarant or Owner of any Lot participating in the Lot rental and resale services being offered by Declarant.

## **ARTICLE 15 - ANNEXATION OF ADDITIONAL PROPERTY**

15.1 **Declarant's Annexation of Property.** Without the necessity of amending this Declaration, or obtaining the assent of the Association or its Members, the real

property described in **Exhibit C** (the "**Annexable Area**"), or any portion thereof, may be annexed to the Project and made subject to this Declaration at the written election of the Declarant or Declarant's successors in interest, at any time, and from time to time, within three (3) years following the original issuance of a Final Subdivision Public Report by the DRE for the most recent Phase of the Project.

A. The annexation of any portion of the Annexable Area to the Project shall be effectuated by the recording of a Supplement to this Declaration (the "**Supplement**"). The Supplement shall:

(1) Describe the Annexable Area, or that portion thereof to be annexed;

(2) State that the Supplement is being effected pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplement to the Declaration;

(3) State that the scheme of this Declaration shall extend to the property described in the Supplement;

(4) State that upon the recordation of the Supplement, the following shall occur:

(a) The property described in the Supplement shall be part of the Project and shall be subject to the provisions of the Project Documents, and to the rights and powers of the Association pursuant to the Project Documents;

(b) All the Owners of Lots constituting a portion of the property described in the Supplemental shall automatically become Members of the Association, with voting rights commencing on the date regular assessments commence.

(5) Convey any additional Common Area to the Association.

**15.2 Regular and Special Assessments.** Regular and Special Assessment with respect to the annexed real property shall be established, and shall commence, as described in Article 9.

**15.3 Easements.** Declarant hereby reserves to itself, its successors and assigns, the right to, and agrees that it will, grant to the Owners of Lots in the Annexable Area, non-exclusive easements for ingress and egress and construction activities over the Common Areas. Declarant further agrees that, in the Supplement, it will reserve to itself, its successors and assigns, the right to grant, and covenants and agrees that it will grant, to all Owners of property that may from time

to time be covered by this Declaration, non-exclusive easements of use, enjoyment, access, ingress and egress, over any Common Area in the Annexable Area.

**15.4 Complementary Provisions.** The Supplement may contain complementary additions, amendments and modifications to this Declaration necessary to reflect the different character, if any, of the real property being annexed, which are not inconsistent with the general scheme of this Declaration or which are required by an First Mortgagee to make Lots in the Project eligible for mortgage insurance, guarantee, or insurance. Notwithstanding the foregoing, unless approved by the DRE, no Supplement may:

A. Cause any substantial increase in the Common Area costs and expenses then being borne by the Owners that was not disclosed in the Final Subdivision Public Report for the Phase of the project in which an Owner purchased is Lot; or

B. Otherwise materially adversely affect the rights of Owners without the prior affirmative vote or written consent of at least sixty-seven percent (67%) of each class of Owners entitled to vote and their Mortgagees.

**15.5 De-Annexation.** Declarant hereby reserves the right to de-annex any Phase which may be annexed to the Property pursuant to this Declaration, and to delete said property from the scheme of this Declaration and from the jurisdiction of the Association, provided, and on condition that the de-annexation shall be made prior to the closing of the sale of the first Lot in the Phase to be de-annexed.

**15.6 Amendments to Supplement.** Before the close of the first sale of a Lot in the second Phase, or any subsequent Phases of the Project, any Supplement recorded pursuant to this Article 15 with respect to such Phase may be amended in any respect or revoked by the execution of an instrument amending or revoking the Supplement by Declarant and any First Mortgagee of record on the property described in the Supplement. After the close of the first (1<sup>st</sup>) sale of a Lot in the second Phase, or any subsequent Phase of the Project, the Supplement recorded with respect to such Phase may be amended by the requisite affirmative votes of Members residing in Lots located within the annexed property (and first Mortgagees, if applicable, of such Lots), as set forth in Section 13.7.B above, on the following conditions:

A. Such amendment applies only to the annexed property described in said Supplement; and

B. Such amendment shall in no way contradict, revoke or otherwise alter any of the covenants set forth in this Declaration.

## ARTICLE 16 - GENERAL PROVISIONS

16.1 **Duration.** This Declaration is binding upon all parties for sixty (60) years after the Recording date. After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Lots record a signed, written instrument:

A. At least one (1) year before the beginning of any ten (10) year period; and

B. Agreeing to change or terminate this Declaration.

### 16.2 **Amendment.**

A. Before the first (1<sup>st</sup>) Lot is sold, Declarant may unilaterally amend this Declaration by recording an instrument of amendment in the office of the Yuma County Recorder.

B. Except as otherwise provided herein, after the first Lot is sold, this Declaration may only be amended in the following ways (subject to Section 16.2.E below, and to Article 13 entitled "Mortgagee Protection"):

(1) If only Class A Memberships exist, by the vote or written consent of Members representing both:

(a) Fifty-one percent (51%) or more of the total voting power of the Association; and

(b) Fifty-one percent (51%) or more of the votes of Members other than Declarant.

(2) If the Class B Membership exists, by the vote or written consent of a majority or more of a Quorum of each class of membership;

C. A copy of each amendment shall be certified by at least two (2) officers of the Association, and the Amendment shall be effective when a certificate of amendment (a "**Certificate of Amendment**") is recorded. The Certificate of Amendment, signed and sworn to by two (2) officers of the Association that the requisite number of Owners and Mortgagees have either voted for or consented in writing to the amendment, shall be conclusive of that fact when the Certificate of Amendment is Recorded in the Official Records of Yuma County.



D. The percentage of Association Members needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.

E. Notwithstanding any other provision of this Article, the definition of "Motorcoach Vehicle" in Section 1.31 of Article 1, and the restrictions contained in Sections 5.1 and 5.2, may only be amended in the following ways:

(1) If only the Class A Membership exists, by the vote or written consent of Members representing both:

(a) Seventy-five percent (75%) or more of the total voting power of the Association; and

(b) At least fifty-one percent (51%) of the votes of Members other than the Declarant.

(2) If the Class B membership exists, by the vote or written consent of a majority or more of a quorum of each class of membership.

**16.3 Enforcement.** Any Owner or Occupant who fails to comply with any provision of the Project Documents will be subject to any action to recover sums, damages, or injunctive relief. These remedies are intended to be cumulative, and do not prevent the exercise of any other legal right or remedy. An Owner or the Association may enforce any and all provisions in the Project Documents by legal or equitable action. Failure to take action does not constitute a waiver of the right to take action.

**16.4 Notices.** All notices, demands, statements or other communications required to be given to or served on a Lot Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, addressed to the Lot Owner, at the address which the Lot Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Lot of such Owner. A Lot Owner may change such Owner's address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association. A notice given by mail shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Lot is owned by more than one (1) person, notice to one (1) of the Owners shall constitute notice to all Owners of the same Lot. Each Lot Owner shall file such Owner's correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

**16.5 No Rights Given to Public.** This Declaration does not grant any portion of the Property to the general public or for any public use whatsoever.

**16.6 Termination of any Responsibility of Declarant.** If Declarant conveys fee title to all of the Property for use by any entity or individual(s), then Declarant will be relieved of the performance of any further duty or obligation in this Declaration, and such entity or individual(s) will be obligated to perform all duties and obligations of Declarant under the Project Documents.

**16.7 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements.**

A. Where any Phase of the Project includes Common Area Improvements which have not been completed prior to the close of escrow on the sale of the first Lot in said Phase, and where the Association is obligee under a bond or other arrangement (hereafter "**bond**") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider the vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion date specified for that improvement in the planned construction statement appended to the bond. If the Association has given an extension in writing for the completion of any Common Area Improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond or on the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

B. On satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Association shall acknowledge in writing that it approves the release of the bond and shall execute any other documents as may be necessary to effect the release of the bond. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the completion of the Common Area Improvements as described in the plans and specifications. Any dispute between the Declarant and the Association regarding the completion of the Common Area shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association and the prevailing party shall be entitled to recover costs, including reasonable attorneys' fees.

16.8 **Severability.** Any provision in this Declaration invalidated by court judgment does not affect other provisions, which remain in full force and effect.

16.9 **Number of Days.** In computing the number of days for purposes of any provision of the Project Documents, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the next day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

16.10 **Headings.** Section headings are inserted only for convenience and are not intended to define, limit or describe the scope or intent of any section.

16.11 **Number.** As required by the context of this Declaration, a singular grammatical reference includes the plural application.

16.12 **Purpose of Declaration.** This Declaration must be construed liberally to fulfill its purpose of creating and maintaining a uniform community development plan with Common Areas for the benefit and enjoyment of the Owners, their tenants, servants and guests. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

16.13 **Arbitration of Disputes.** In the event of an Arbitrable Dispute (as defined below) between or among Declarant, its broker, or their agents or employees, on the one hand, and any Owner or the Association, on the other hand, the matter will be submitted to binding arbitration. **"Arbitrable Disputes"** include any controversy or claim between the parties arising out of, or relating to, the rights or duties of the parties under this Declaration or under the other Project Documents including, but not limited to, any claims based on contract, tort, or statute. The arbitration shall be conducted pursuant to the following:

A. The arbitration shall be conducted by the American Arbitration Association ("**AAA**") in accordance with the rules of the AAA ("**Rules**") as herein modified.

B. There shall be only one arbitrator who shall be selected in accordance with the AAA Rules.

C. Parties shall be allowed to conduct discovery under the provisions of the Rules of Civil Procedure. Any disputes concerning discovery shall be submitted to the arbitrator.

D. The arbitrator shall have the power to award all legal and equitable remedies.

E. The parties agree to be bound by the decision of the arbitrator, which shall be final, shall not be appealable, and which shall allow for no trial de novo on the same issues decided pursuant to the arbitration.

F. Upon the rendering of the decision or award, the prevailing party or parties shall be entitled to reimbursement from the losing party for reasonable costs and attorneys' fees in accordance with Section 16.14 below.

G. Nothing in this Section shall constitute a waiver of any of the benefits of any statute of limitations or equitable defenses by any party.

H. Notwithstanding any other provision of this Declaration, this Section may not be amended without the prior written consent of Declarant.

**16.14 Attorneys' Fees.** In any legal or equitable proceeding by an Owner, Declarant, or the Association to enforce any provision of the Project Documents, the prevailing party shall be entitled to recover from the losing party reasonable costs incurred in connection with such proceeding including, but not limited to, attorneys' fees.

**16.15 Costs of Enforcement.** With respect to Section 16.13 above, in the event that it becomes necessary for the prevailing party to take legal action to enforce a judgment rendered against the losing party, the prevailing party shall be entitled to recover from the losing party the costs incurred in enforcing such judgment including, but not limited to, attorneys' fees. This provision is intended to be severable from the other provisions of this Declaration and to survive any judgment rendered on this Declaration and is not to be deemed merged into such judgment.

**16.16 Declarant's Right to Use Similar Name.** The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

**16.17 Conflicting Provisions.** In the case of any conflict between this Declaration, the Articles or the Bylaws, this Declaration shall control.

In witness whereof, the undersigned, being the Declarant, has executed this Declaration on the day and year first above written.

THE PALMS RV RESORT DEVELOPMENT,  
INC., an Arizona corporation

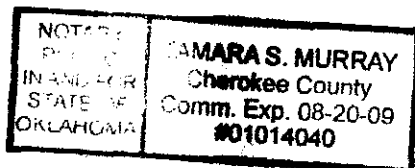
By Ryker Young  
Ryker Young  
Its President  
[Declarant]

~~Oklahoma~~  
STATE OF ARIZONA

County of ~~Maricopa~~ Cherokee

The foregoing instrument was acknowledged before me this 28 day of November, 2007, by Ryker Young, the President of THE PALMS RV RESORT DEVELOPMENT, INC., an Arizona corporation, on behalf of the corporation.

(Seal and Expiration Date)



Samara S Murray  
Notary Public

**EXHIBIT "A"**

**[Parcel]**

Lots 1 through 453, inclusive, Tracts A through B, inclusive, Landscape Areas 1 through 34, inclusive and all private streets, THE PALMS RV RESORT, according to Book \_\_\_\_24\_\_\_\_ of Plats, pages \_\_\_\_17\_\_\_\_ through \_\_\_\_19\_\_\_\_, records of Yuma County, Arizona.

**EXHIBIT "B"**

**[Commons Areas]**

Tracts A through B, inclusive, Landscape Areas 1 through 34, inclusive and all private streets, THE PALMS RV RESORT

**EXHIBIT "C"**

**[Annexable Area]**

112-17-003:

The North half of the Northeast quarter of the Northeast quarter of Section 9, Township 9 South, Range 22 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;  
EXCEPT the East 816 feet; and  
EXCEPT 10% of the minerals as reserved in Book 90 of Deeds page 347 records of Yuma County, Arizona

112-17-001:

The East half of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 9, Township 9 South, Range 22 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;  
EXCEPT 10% of all minerals as reserved in Book 90 of Deeds, page 347, records of Yuma County, Arizona.

112-17-002

The West 486 feet of the East 816 feet of the North half of the Northeast quarter of the Northeast quarter of Section 9, Township 9 South, Range 22 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;  
EXCEPT that part thereof which lies within the East half of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 9; and  
EXCEPT 10% all minerals that may be found in or on the premises as reserved in Book 90 of Deeds, page 347, records of Yuma County, Arizona.



## EXHIBIT D

**[Lots Restricted to Class A Motorcoach Vehicles]**

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