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### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF RINCONADO ESTATES

This Declaration is made by Fidelity National Title Agency, Inc., an Arizona corporation, as Trustee under Trust No. 60251 ("Declarant") on November 2<sup>nd</sup>, 2006.

The Declarant is the Owner of the following described Property:

Lots 1 through 13 and Common Area "A" as shown on the Plat of Rinconado Estates, a subdivision of Pima County, Arizona as recorded in Book 61 of Maps and Plats, at Page 96 in the records of the Pima County, Arizona Recorder ("Property").

NOW THEREFORE, the Declarant declares that the above described Property, including the Lots and Common Areas, will be held, sold and conveyed subject to the following covenants, conditions and restrictions, which will run with title to the land and be binding upon all persons having or acquiring any right, title or interest in the Property, or any portion thereof and will inure to the benefit of each Owner his/her heirs, successors, grantees and assigns:

#### ARTICLE I DEFINITIONS

- Section 1.1. "Act" refers to the A.R.S. §33-1801 *et. seq.* which is the Arizona Planned Community Act, as amended from time to time.
- Section 1.2. "Annual Assessment" means the charges levied and assessed each year against each Lot or Owner pursuant to Article III,
- Section 1.3. "Architectural Review Committee" means the committee of the Association to be created pursuant to Article V for the purpose of approving or disapproving plans and specifications for the construction of any Improvements on any Lot.
- Section 1.4. "Articles" mean the Articles of Incorporation of the Association, as amended from time to time.

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- Section 1.5. "Approving Agent" means the Declarant or a person or persons, partnership, corporation or other entity duly appointed in writing by Declarant. The Approving Agent will become the Association after termination of the Development Period.
- Section 1.6. "Assessment" means an Annual Assessment, Special Assessment, and/or Maintenance Assessment.
- Section 1.7. "Assessment Lien" means the lien against a Lot securing the payment of Assessments as created and imposed by Article III\_\_\_\_\_.
- Section 1.8. "Association" means Rinconado Estates Homeowners Association, an Arizona nonprofit corporation which will be formed by the Declarant.
- Section 1.9. "Board" means the Board of Directors of the Association.
- Section 1.10. "Bylaws" means the Bylaws adopted by the Board and as amended or supplemented.
- Section 1.11. "Building Envelope" means that area on the Lot within which all of the Improvements must be built and the only area in which alterations to the existing landscape may occur. The Building Envelope for each lot is defined in the Plat of Rinconado Estates.
- Section 1.12. "Common Areas" mean any portion of the Property shown on the plat designated as "Common Area A".
- Section 1.13. "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with required and other reasonable allocations to reserves, including but not limited to expenditures incurred in the enforcement of provisions of the Governing Documents. Common Expenses include, without limitation: (1) the cost of maintaining, managing, operating, repairing and replacing the Common Areas; (2) the costs of management and administration of the Association, including, without limitation, compensation paid to accountants, architects, attorneys, and other consultants and employees; (3) the costs of insurance maintained by the Association; (4) the costs of obtaining insurance for the benefit of the Association, its directors, officers and employees of the Association and any managing agent of the Association; (5) property taxes and assessments levied against the Common Areas; and (6) costs incurred by the Association in furtherance of its purposes, performance of its obligations or in the exercise of any of its powers and rights.
- Section 1.14. "Declarant" means Fidelity National Title Agency, Inc., an Arizona corporation (or a successor trustee), as Trustee under Trust No. 60251 and the beneficiaries under that Trust, together with each of their successors or

assigns in the ownership of the Property. The term "successors or assigns" as used in this section will not be deemed to mean individual Lot owners who purchased individual Lots or an interest therein but only a person or entity that succeeds to substantially all of the ownership of the Declarant. If Trust No. 60251 terminates and legal title to the Property becomes vested in the beneficiaries of said Trust No. 60251, through a properly executed and recorded Assignment of Declarant's Rights, reference to "Declarant" will mean the beneficiaries of Trust No. 60251, together with each of their successors or assigns. The term "successors or assigns" of the Declarant as used in this Declaration will not be deemed to mean the individual Owners who have purchased Lots from the Declarant or those whose predecessors in interest have purchased Lots from the Declarant.

- Section 1.15. "Declaration" means this Declaration as amended or supplemented from time to time.
- Section 1.16. "Design Guidelines" refer to the written rules, regulations, restrictions, explanations and guidelines governing the construction, change or alteration of any Improvements on the Lots, as adopted and amended by the Architectural Review Committee.
- Section 1.17. "Detached Single-family Dwelling" or "Single-family Dwelling" or "Dwelling" means the building and all structures erected and maintained in conformance with the requirements of this Declaration for private residential purposes and designed for occupancy by a single family. The following are not included within this definition: any professional office, flat, apartment, multi-family dwelling or duplex, lodging house, rooming house, hotel, hospital or sanatorium, even though intended for residential purposes, or similar dwelling, whether or not a fee is charged for occupying the dwelling. In addition, this definition excludes any residence used for transient purposes.
- Section 1.18. "Development Period" means that period of time during which the Declarant has the right to appoint and remove the officers and members of the Board and to handle all functions of the Architectural Committee. The Development Period expires when the last Lot with a Residence constructed thereon, has been completed and sold.
- Section 1.19. "Governing Documents" refers to this Declaration, the Bylaws, Articles, Design Guidelines and any Rules adopted by the Board.
- Section 1.20. "Improvement" means any and all changes to the Lot from its natural state prior to any construction, other than interior modifications of existing structures and includes, but is not limited to the dwelling, structures, buildings, outbuildings, patios, ramadas, garages, guest houses, storage sheds, playhouses and equipment, servants' quarters, swimming pools,

tennis or recreational courts, walls, fencing, paving, landscaping, driveways, and private roads, whether intended to be temporary or permanent. It also includes all changes or modifications to the exteriors of any structures, including changes in color or materials, whether for maintenance, repair, or alterations.

- Section 1.21. "Lot" means any numbered parcel of land as shown on the recorded plat.
- Section 1.22. "Member" means a person or entity entitled to hold membership in the Association.
- Section 1.23. "Mortgage" includes mortgages, deeds of trust and Contracts for Sale of Real Estate. The term "Mortgagee" includes mortgagees, beneficiaries under Deeds of Trust and holders of vendors' interests in recorded Contracts for Sale of Real Estate.
- Section 1.24. "Natural Open Space" or "NOS" means the area described on the Plat of the development, as defined in Chapter 18.72.030A4 of the Pima County Zoning Code.
- Section 1.25. "Owner" means each person or entity who is or becomes the holder of fee simple or equitable title to each Lot. Ownership is vested upon recordation of a duly executed deed. The term "Owner" also includes a contract purchaser who is entitled to possession of a Lot under the terms of a recorded Contract for Sale of Real Estate and excludes the holder of the vendor's interest in the Contract. Each Owner is responsible for the acts and omissions of that Owner's family, tenants and guests.
- Section 1.26. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person.
- Section 1.27. "Plat" means the recorded plat which subdivides all or any part of the Property.
- Section 1.28. "Property" means the real Property described above.
- Section 1.29. "Reimbursement Assessments" means any and all costs and charges assessed against an Owner pursuant to Section 3.6.
- Section 1.30. "Rules" refers to the policies and procedures adopted by the Board for the use of the Common Areas and the use and occupancy of the Lots. Rules may be enforced in the same manner as the enforcement of the other Governing Documents.
- Section 1.31. "Single Family" means a group of one or more persons who are related to each other by blood, marriage or legal adoption, or a group of not more

than three persons who are not related, but who maintain a common household in a Dwelling.

Section 1.32. "Special Assessment" means any Assessment levied and assessed pursuant to Section 3.4.

Section 1.33. "Visible" means, with respect to any given object, that such object is visible to a person six feet tall, standing at ground level on any part of a neighboring Lot or from the Common Areas.

## ARTICLE II HOMEOWNERS' ASSOCIATION

Section 2.1. General. An Arizona nonprofit corporation, known as the "Association" will be formed to administer the Properties and to enforce the provisions of the Governing Documents. Declarant will convey the Common Areas at the time the Plat is recorded. Declarant may, at Declarant's sole option at any time thereafter, convey or otherwise transfer to the Association all or any part of the Property described in this Declaration and any Improvements situated thereon, and assign or otherwise transfer to the Association all or any number of the rights, powers and duties retained by Declarant under this Declaration, through a properly executed and recorded Assignment of Declarant's Rights. Upon such assignment or other transfer, it will be the responsibility of the Association to exercise these rights and powers and perform these duties to further the purposes for which the Association is organized. In addition, the Association will accept the responsibilities set forth in the dedication on the Plat.

Section 2.2. Membership. Every Owner is a member of the Association. Membership will be appurtenant to and may not be separated from ownership of a Lot. Any sale or transfer of a Lot will also transfer the Owner's membership in the Association.

Section 2.3. Voting.

2.3.1. Declarant. Declarant is a Member of the Association for so long as it owns any Lot.

2.3.2. Owner's Voting Rights. Each Owner of a Lot is entitled to one vote for each Lot owned; provided, however, that the Declarant is entitled to appoint and remove the officers and members of the Board of the Association and to appoint the members to the ARC during the Development Period.

2.3.3. Right to Vote. No change in the ownership of a Lot is effective for voting purposes until the Board receives written notice of the change together

with satisfactory evidence of the transfer. The vote for each Member must be cast as a single unit. Fractional votes are not allowed. If a Lot is owned by more than one Person and the Owners cannot agree on how their vote or votes will be cast, then they will not be entitled to vote on the matter in question. If any Owner exercises his/her vote on any matter, it will be conclusively presumed that the Owner is acting with the authority and consent of the all other Owners of the Lot unless an objection is made to the Board, in writing, at or prior to the time the vote is cast. If more than one Person votes or attempts to exercise the vote for a particular Lot all of those votes will be void.

Section 2.4. Duties and Responsibilities of the Association. The Association will provide for maintenance, preservation and architectural control of the Property for the benefit of the Owners, and will be responsible for:

- 2.4.1. Maintenance, repair and replacement of all private streets and roadways, drainage ways and drainage facilities located within the Property.
- 2.4.2. Operation, maintenance (including landscaping as set forth in the landscaping plan approved by Pima County, where appropriate), repair and replacement of controlled access gates, street signs, monuments, fences, walls and all other Improvements, whether constructed by Declarant or the Association, located in or on the road rights-of-way, any easement areas on Lots, other portions of the Property conveyed to the Association and Common Areas as platted.
- 2.4.3. Acquisition of appropriate amounts and coverages of casualty insurance on Property owned or operated by the Association and on structures placed in or on road rights-of-way, on any easements conveyed to the Association or any Common Areas.
- 2.4.4. Acquisition of such liability insurance as the Board deems necessary to protect the members and the Board from any liability from occurrences or happenings on or about those portions of the Property maintained by the Association (including, but not limited to, directors' and officers' liability insurance for the Board and fidelity insurance on those persons handling the Association's funds).
- 2.4.5. Payment of all utilities and all real estate taxes and assessments on Property owned or operated by the Association.
- 2.4.6. Hiring, firing, supervising and paying employees and independent contractors, including but not limited to workers, landscapers, attorneys, accountants, architects and contractors to carry out the Association's obligations.

- 2.4.7. Assessment and collection of the funds required to accomplish the objectives and perform the duties and obligations of the Association.
- 2.4.8. Granting of deeds and/or easements on, over, across or under Common Areas, private streets and roadways and those easements depicted on the Plat or reserved or granted to such persons or entities, public agencies, public authorities and/or public or private utilities for such purposes as Association will deem necessary or prudent.
- 2.4.9. Exercise and perform all of the rights, powers, and duties assigned to it by the Declarant and granted to it by the Articles.
- Section 2.5. Transplanted Saguaro Cactus. Saguaros that were transplanted during the development period, both in the Common Areas and on the Lots, will be preserved and maintained by the Association; provided however, that the Association has the right to charge the Owner of any Lot for the costs of replacing and maintaining the Saguaros that are located on the Owner's Lot.
- Section 2.6. Association's Responsibility for Preservation of Natural Open Space Areas. The Association is responsible for and will bear all costs associated with the ownership, operation, upkeep and maintenance of the NOS Areas. The Association is responsible for enforcing any requirements imposed by Pima County on the use of the NOS Areas and for promptly repairing any damage to such NOS Areas caused by any Person who violates such restrictions. Pima County has the right, but not the obligation, to enforce restrictions on the NOS Areas. The Association will defend and hold the County and its officers, employees, and agents, harmless from and against any loss, cost, liability or expense, related to the maintenance, use (whether in compliance with or in violation of any restrictions imposed by Pima County) or any disturbance of the NOS Natural Areas. This Section 2.6 cannot be amended without the prior approval of Pima County.
- Section 2.7. Rules and Regulations. The Association has the right, from time to time, to enact reasonable Rules regarding the use and enjoyment of the Property and the conduct of the Owners which affects the other Owners. Such Rules must be consistent with the other Governing Documents. The Rules will be binding upon all Owners and will be enforced in the same manner as the provisions of this Declaration.
- Section 2.8. Suspension of Voting Rights. A Member's voting rights will be suspended during any period in which any Assessment against that Member's Lot remains unpaid, or during any period that the Owner is in violation of the Governing Documents.

Section 2.9. Utility Service. Electric power, sewers, and water are available to the Lots through private utility companies authorized by the State of Arizona. Neither the Declarant, the Board nor the ARC assumes any responsibility for and does not guaranty the quality or quantity of the water and electric power to be furnished to the Lots and will not, in any way, be liable for any shortage of water or electricity. Each Owner holds the Declarant, the Association, their officers, directors, board members, employees, agents or assigns and all utility companies supplying utilities to the Lot, including the City of Tucson, harmless from any claim, loss, damage or destruction to the Lot or the improvements on the Lot or for any injuries to any Person, including death, arising out of the failure of the City of Tucson to supply water services adequate to meet fire flow requirements for the Improvements on any Lot.

### **ARTICLE III ASSESSMENTS**

Section 3.1. Obligation to Pay Assessments. Each Owner covenants and agrees to pay the following to the Association: (1) Annual Assessments or charges, (2) Reimbursement Assessments and (3) Special Assessments. These assessments will be established and collected as provided in this Article III. All assessments, together with interest, late fees, costs, and reasonable attorney fees, will be charged against the Owner and will be a continuing lien upon the Lot. Delinquent assessments, together with interest, late fees, costs, and reasonable attorney fees, are the personal obligation of the person who was the Owner of the Lot at the time when the assessment was levied.

Section 3.2. Purpose of Annual Assessments. The Annual Assessments levied by the Association will be used to carry out the Association's obligations under the Governing Documents, including the maintenance of the Common Areas; payment of the Operating Expenses, and for all other purposes set forth in the Governing Documents. The cost of all such repairs, maintenance and improvements is a Common Expense and will be paid for by the Association.

Section 3.3. Annual Assessment.

3.3.1. Authority to Determine Assessments. The Board is vested with full authority and absolute discretion to determine the amount of the Annual Assessment, based upon the operating budget of the Association adopted by the Board, including appropriate reserves.

3.3.2. Notification to Owners of Annual Assessments. Notice of any change in the amount of the Annual Assessment for the next calendar year will be provided to the Owners by December 1 of each year; provided, however, if



for any reason the Board has not determined the amount of the next fiscal year's assessment and provided notice to the Owners by December 1, the Board has the right to make that determination at any time with the payment thereof being due 30 days after notice is provided to the Owners.

- 3.3.3. Payment of Annual Assessment in Installments. The Board may determine that the Annual Assessment is payable in installments. If the Board determines that the annual assessment may be paid in installments, then at such time as an Owner is delinquent in the payment of any installment, the Board has the right to accelerate the balance of the year's assessment, all of which will be due within 15 days of written notice provided by the Board to the Owner.
- 3.3.4. Payment of Prorated Annual Assessments. Each Owner will begin paying the Annual Assessments on the first day of the month following the conveyance of a Lot to that Owner. This amount will be adjusted according to the number of months remaining in the calendar year.
- Section 3.4. Special Assessments. In addition to the Regular Assessments, the Board may levy Special Assessments for any of the following purposes: (1) constructing capital improvements in the Common Area; (2) correcting an inadequacy in the current operating account; (3) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Common Area; or (4) paying for such other matters as the Board deems appropriate. The Board will determine the due date of any Special Assessment.
- Section 3.5. Uniform Rate of Assessment. All Assessments will be set at a uniform rate for all Lots.
- Section 3.6. Reimbursement Assessments.
  - 3.6.1. Bringing the Lot and Common Areas into Compliance. The Association has the right to assess a Reimbursement Assessment against any Owner if a failure to comply with the Governing Documents has necessitated an expenditure of money by the Association to bring the Owner or his/her Lot into compliance, or to repair any damage or destruction of the Common Area, including the NOS Areas, caused by the Owner, the Owner's family, guests or tenants, including any attorney fees which were incurred by the Association.
  - 3.6.2. Collection of Reimbursement Assessments. Reimbursement Assessments may be collected in the same manner as Annual Assessments.
- Section 3.7. Effect of Nonpayment of Assessments; Remedies of the Association. In addition to all other remedies provided by law, the Association, or any

authorized agent of the Association, may enforce the obligations of any Owner to pay the Assessments in any manner provided by law or by either or both of the following procedures:

3.7.1. By Suit. The Association may file a lawsuit against any Owner who is personally obligated to pay the delinquent assessments. Any judgment obtained in the Association's favor will include the amount of the delinquent assessments, any additional charges incurred by the Association, attorney fees and court costs, collection costs and any other amounts which a court may award. A proceeding to obtain a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the Association's lien.

3.7.2. By Lien. The Association's lien for any unpaid assessment arises when any assessment is not paid within 15 days of its due date. As more fully provided for in A.R.S. §33-1807 of the Act, the recording of this Declaration constitutes record notice and perfection of the Association's lien. The Association is not required to record a lien, but may do so to provide notice to third parties of its interest in the Lot. Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or transfer of a Lot does not affect the Association's lien. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages. The lien for assessments is prior and superior to all other liens, except (1) A recorded first mortgage on the Lot; (2) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (3) the lien of any other mortgage or deed of trust which is recorded before the date this Declaration was recorded.

3.7.3. Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur in the process of collecting funds from any Owner. All additional charges will be included in any judgment in any suit to collect delinquent assessments or may be levied against a Lot as a reimbursement assessment. Additional charges will include, but not be limited to, the following:

3.7.3.1. Late Charges. A late charge equal to \$15.00 or 10% of the amount due, whichever is greater, will be charged on each delinquent assessment. An Assessment is delinquent if it is not paid within 15 days from the date it is due.

3.7.3.2. Attorney Fees. Reasonable attorney fees and costs incurred if an attorney is employed to collect any assessment or sum due,

including the placement of the lien, or the filing of a suit or otherwise.

3.7.3.3. Collection Costs. Litigation expenses, collection costs and court costs incurred.

3.7.3.4. Interest. Interest on all sums due from the Owner, including delinquent assessments, costs of collection, attorney fees and late charges, at an annual percentage rate as established by the Board; and

3.7.3.5. Other. Any other additional costs which the Association may incur in the process of collecting delinquent assessments or other sums due to the Association.

Section 3.8. Application of Payments. Unless the Owner directs otherwise, all payments received by the Association will be applied in the following order: first to any unpaid assessments, then to the unpaid late charges assessed on the unpaid assessments, then to reasonable collection fees, unpaid attorney fees and costs incurred in the collection of the unpaid assessments. Any remaining amounts will be applied to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.

Section 3.9. Statement of Assessment Lien. Upon written request from any Owner, the Owner's agent, or a lienholder, the Association will furnish the person who made the request with a written certificate, in a recordable form, signed by an officer or authorized agent of the Association stating the amount of any assessment which is due and any additional charges secured by the lien upon his/her Lot. The Board may impose a reasonable charge for the issuance of that certificate.

Section 3.10. No Exemption of Owner. No Owner is exempt from liability for the payment of assessments because he/she does not use or enjoy the Common Area, or has abandoned his/her Lot, or for any other reason, including any allegation that the Board is not performing its obligations under the Governing Documents.

Section 3.11. Declarant's Obligation to Pay Assessments.

3.11.1. Declarant's Exemption. Notwithstanding anything in this Declaration to the contrary, the Declarant is not liable for and is not required to pay any Assessments for any Lots which it owns.

3.11.2. Payment of Deficiency. In lieu of the payment of Annual Assessments, the Declarant will pay any actual deficiency in the operating revenue necessary

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to pay current ordinary expenses for the operation and maintenance of the Association, but only up to the full Annual Assessment for each Lot owned by Declarant. A deficiency exists if current ordinary expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that Declarant is not liable for any deficiency created by a reduction in the amount of the Annual Assessments charged for any prior year, nor for any deficiency arising after the expiration of the Development Period. Instead of paying the deficiency, the Declarant may, at any time in its sole discretion, elect to stop paying the deficiency and instead pay an amount up to the full Annual Assessment for each Lot owned by it.

Section 3.12. Subordination of the Lien to Mortgages. The lien for assessments is subordinate to the lien of any first mortgage or deed of trust recorded against the Lot. The sale or transfer of any Lot does not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure, or any proceeding in lieu thereof, extinguishes the lien for such assessments but only as to those payments which became due prior to such sale or transfer. No sale or transfer of any Lot will relieve the Lot from liability for any assessments which become due before the sale or transfer, or from the lien for assessments.

Section 3.13. Reserves.

3.13.1. To insure that the Association has adequate funds to pay the Common Expenses, each Purchaser of a Lot will pay the Association, immediately upon becoming the Owner of the Lot, a sum equal to 25% of the Annual Assessment on the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for the payment of operating expenses or any other purpose permitted under the Governing Documents. Payments made pursuant to this Section will not be refundable and will not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

3.13.2. The reserves which are collected as part of the Regular Assessments will be deposited by the Association in a separate bank account to be held for the purposes for which they are collected. Such reserves will be deemed a contribution to the capital account of the Association by the Owners and once paid, no Owner will be entitled to any reimbursement of those funds. The Board is only responsible for providing for such reserves as the Board in good faith deems reasonable, and no Member of the Board is liable to any Owner or to the Association if the amount in the reserve account proves to be inadequate.

Section 3.14. Fines and Penalties.

- 3.14.1. If any Owner, his/her family or any licensee, invitee, tenant or lessee violates the Governing Documents, the Board may levy a fine upon the Owner for each violation, after having provided notice of the violation and provided the Owner with an opportunity for a hearing before the Board or any Committee designated by the Board to act as the Hearing Panel. However, for each day that a violation continues after written notice to cease has been mailed to the Owner, is a separate violation and subject to the imposition of a fine in the amount determined by the Board.
- 3.14.2. Collection of Fines. Any fines imposed by the Board will be collected in accordance with the procedures set forth in the Act.

**ARTICLE IV  
MORTGAGE PROTECTION**

Section 4.1. Mortgage Protection. Notwithstanding and prevailing over any other provision of the Governing Documents, the following provisions apply to and benefit each First Mortgagee:

- 4.1.1. The Mortgagee will not be personally liable for the payment of any assessment, nor for the observation or performance of any provision of the Governing Documents, except for those matters which are enforceable by injunctive or other equitable actions, and which do not require the payment of money.
- 4.1.2. During the pendency of any proceeding to foreclose any mortgage, including any period of redemption, the mortgagee may, but is not required to, exercise any or all rights and privileges belonging to the Owner of the mortgaged Lot, including but not limited to the exclusion of the Owner's exercise of such rights and privileges.
- 4.1.3. When the mortgagee becomes the record Owner of a Lot, it will be subject to all of the terms and conditions of the Governing Documents, including but not limited to the obligation to pay all assessments and charges accruing thereafter, in the same manner as any Owner.
- 4.1.4. The First Mortgagee, or any other party acquiring title to a mortgaged Lot through foreclosure suit or through any equivalent proceeding arising from the mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, will acquire title to the mortgaged Lot free and clear of any lien authorized by or arising out of any of the provisions of the Declaration or Bylaws which secured the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or

equivalent proceeding, including the expiration date of any period of redemption.

4.1.5. Mortgagees are entitled to pay taxes or other charges which are in default and which may or have become a charge against any Common Area owned by the Association, and such mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area and any first mortgagees making such payment may be owed immediate reimbursement from the Association.

Section 4.2. Rights of First Mortgagee. Nothing in this Declaration gives an Owner priority over any rights of any First Mortgagee of a Lot pursuant to the terms of such mortgagee's mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses or to a taking of any Lot or any part of the Common Area owned by the Association. Each mortgagee will be entitled to timely written notice of such loss or taking.

4.2.1. The breach of any of the Governing Documents will not affect or invalidate any lien of any mortgage or deed of trust made in good faith for value as to any Lot, but the Governing Documents will be binding upon and effective against any party acquiring title to a Lot whose title was acquired by foreclosure, trustee's sale or otherwise.

## ARTICLE V ARCHITECTURAL CONTROL

Section 5.1. Architectural Review Committee. The Declarant and/or the Approving Agent will act as the initial Architectural Review Committee, ("ARC"). After (1) termination of the Development Period or (2) upon the resignation of the Declarant as the ARC, the Board will act as the ARC or may appoint an ARC consisting of two or more Owners.

Section 5.2. Consultants. The Board may hire a licensed and practicing architect to assist the ARC in the performance of its duties. The architect has the right to review the plans and specifications and make recommendations to the ARC. The Board may also hire such other consultants which, in its sole discretion, are necessary to assist the ARC in its duties. Consultants hired by the Board are entitled to receive compensation for their services.

Section 5.3. Powers of the ARC. The ARC has the exclusive right, exercisable in its sole discretion, to promulgate or to amend the Design Guidelines, or waive any provision of this Article, provided that in no event will any waiver or variance be effective unless in writing and signed on behalf of the ARC by a person duly authorized to sign such waiver, and further provided that no

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such waiver or variance will be deemed a waiver of the right to enforce this Declaration or the right to enforce any such rules, regulations or restrictions promulgated by the ARC in the future as to others. Any waiver or variance granted by the Approving Agent or the ARC will be given in exchange for a Hold Harmless Agreement executed by the Owner benefitting from the waiver and running to the benefit of the Declarant or its successors or assigns, and will be binding on the heirs, representatives and successors in interest to the Owner who is granted such variance. Further, neither the Declarant nor the ARC will have any liability to any Owner or otherwise in granting any such waiver or variance.

Section 5.4. ARC Approval. Except for Improvements or alterations undertaken by the Declarant, no building, fence, wall or other structure or Improvement will be commenced, erected or maintained on any Lot, nor can any exterior addition to or change or alteration to the Lot be made until detailed plans and specifications showing the nature, kind, shape, height, materials, color and location has been submitted to and approved in writing by the ARC.

Section 5.5. Form of ARC Submittals.

5.5.1. Each Owner must submit three complete sets of plans for proposed Improvements, specifications (including exterior color schemes) and plot plans which will include the location of all Improvements, including the patio walls, ground mounted equipment, driveways together with all topographical lines and all dimensions and setbacks and proposed cuts and fills. A preliminary landscape plan must be included in the initial submission. Approval of the plans and specifications will be evidenced by the written endorsement of the ARC made on the plans and specifications.

5.5.2. A copy of the endorsed plans will be delivered to the Owner prior to the beginning of construction. One set of plans and specifications will be retained by the ARC. No changes or deviations from the approved plans and specifications, insofar as the exterior of the proposed Improvements is concerned, can be made without the written approval of the ARC. After construction is completed, no changes can be made, including any change in the exterior color of all exterior surfaces, without the written permission of the ARC.

Section 5.6. Plan Submittal Fee. The Board may establish reasonable processing fees, and different classifications of fees, to defer the costs incurred by the Architectural Committee in considering any requests for approvals submitted to it, for using the services of consultants, for monitoring construction of Improvements, for enforcing the architectural standards in the Design Guidelines or for processing requests for reconsideration. These fees must be paid at the time the request for approval is submitted. The Board has the right to adjust the fees from time to time. As of the date

of recordation of this Declaration, the Plan Submittal Fee will be \$1,500.00 and must be paid at the time the Preliminary Plans are submitted to the ARC for approval.

Section 5.7. Design Criteria. All plans must be in accordance with the Design Guidelines and meet the following criteria and such further criteria as the ARC promulgates:

- 5.7.1. Be in accordance with the provisions of the Governing Documents.
- 5.7.2. The location, style of architecture, exterior color schemes and materials, height, exterior lights and driveway, must be in harmony with the general surroundings and in accordance with the philosophy and community goals as set forth in the Design Guidelines.
- 5.7.3. Be in sufficient detail to permit the ARC to make its determination.
- 5.7.4. The material or style of the roof must be compatible with the surroundings. White or reflective roofs are not permitted. Flat roofs must be fully enclosed by parapet walls and painted in a color approved by the ARC.
- 5.7.5. All Dwellings will be constructed of brick, split face concrete block, cement stucco over CMU or frame, fired adobe, natural rock, or other material approved by the ARC and all walls, including patio walls, screening walls and all retaining walls must be constructed and finished to match the Dwelling using the same type of material, color, and texture. No wooden, wire, chain-link or woven metal fences will be permitted. Any plantings used to form a hedge will be subject to the same setback requirements and height limitations that are applied to walls or copings. In determining the height of such wall, coping or hedge, the average ground level will be used.
- 5.7.6. All plans must include utility yards or enclosures, screened from neighboring Lots and roads, in which all exterior heating and cooling apparatus, meters, clotheslines, mechanical equipment, tanks and space for trash or rubbish containers and wood storage will be located.
- 5.7.7. All electrical, telephone, cable TV, security and fire protection system lines must be placed underground and no outside lines can be placed overhead.
- 5.7.8. No Improvement can exceed the height restrictions as set forth in the Design Guidelines. It is the intent to provide a means for controlling the position and height of Dwellings and Improvements relative to surrounding Dwellings and Improvements within the Lots, so as to provide the greatest protection of views and privacy for the benefit of the largest number of Owners; provided, however, that the ARC has the sole discretion to



determine where the Improvements should be located and whether there is any impairment of any other Owner's views.

- 5.7.9. All construction including Dwelling, garage, building, wall, coping, overhang, other structure and Improvements (except drainage-ways, driveways, entryways and septic systems) must be contained within the Building Envelope. There will not be any construction permitted outside of the Building Envelope. The grading limits must be contained within the Building Envelope. The following setbacks from the Lot line apply: (1) Front Yard: 50'; (2) Rear Yard: 50'; and (3) Side Yard: 20'; provided, however, that a patio and wall may be located no closer than 20' from the front or rear Property line or 15' from the side Property lines.
- 5.7.10. The living area in each Dwelling cannot be less than 2,500 square feet (exclusive of covered patios and decks and garage spaces).
- 5.7.11. No Owner may occupy any Dwelling until the ARC has inspected and determined that the construction is in compliance with the approved plans and that the Dwelling is ready for occupancy.
- 5.7.12. The foundations and floors for all Dwellings and all other permitted Improvements on each Lot must be reinforced and constructed in accordance with plans prepared by an engineer or architect registered in the State of Arizona.
- 5.7.13. The finished floor elevation for height calculation purposes will be one foot above the average elevation of the natural grade of the area on which the Dwelling or Improvement is located. The method of determining the finished floor elevation will be set forth in the Design Guidelines.

Section 5.8. Liability.

- 5.8.1. Approval by the ARC relates only to the conformity of plans and specifications to the requirements in the Governing Documents. Such plans and specifications are not reviewed or approved for engineering design or architectural competence. By approving an Owner's plans and specifications, the ARC does not assume liability or any responsibility for any defect in any Improvements constructed from such plans and specification.
- 5.8.2. Neither the Declarant, the Association, the Board, the ARC, nor any consultants hired by the ARC, their agents or employees, will be liable for any damages incurred by anyone submitting plans for approval, nor to any other Owner because of any mistake they may have made in judgment, or by their negligence or nonfeasance, arising out of or in connection with the approval, or disapproval, or failure to approve any plans. By submitting

plans to the ARC, the Owner and any agent of the Owner waives any claim for any such damages.

Section 5.9. Compliance Deposit.

5.9.1. At the time Final Plans are submitted to the ARC for approval, the Owner will deposit the sum of \$5,000.00 by cash or check made payable to the Association (the "Compliance Deposit") with the ARC. The amount of the Compliance Deposit can be increased from time to time by the Board. The Compliance Deposit will be held by the Association and may be utilized or disbursed by the ARC for:

5.9.1.1. The repair of any damage caused directly or indirectly by the Owner to roads, vegetation, entry ways, security facilities or Improvements constructed or controlled by Declarant or otherwise for the general benefit of the Property.

5.9.1.2. Completion of any construction, landscaping or revegetation on the Lot which was not completed by the Owner in accordance with the approved plans.

5.9.1.3. Expenses, including legal and consulting fees, incurred in the enforcement of the Governing Documents with respect to the Owner.

5.9.2. The Compliance Deposit, or any undisbursed portion of such deposit, will be refunded to the Owner within 30 days of the date the ARC made its final inspection and approved the Improvements for occupancy.

**ARTICLE VI  
USE RESTRICTIONS**

Except for Improvements or alterations undertaken by the Declarant, the use and occupancy of the Lots is subject to the following use restrictions:

Section 6.1. Single Family Residential Use. Each Lot will be used for Single Family Dwelling purposes only.

Section 6.2. Business Use.

6.2.1. No business or nonresidential activity of any nature, whether conducted for profit or nonprofit, can be conducted on any Lot. However, an Owner may engage in business activities so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve

any person conducting such business who does not reside on the Property or door-to-door solicitation of residents of the Property; (d) the existence or operation of the business does not increase the Lot's use of Common Area facilities over that standard for a single family dwelling; (e) the existence or operation of the business does not require customers or delivery trucks to visit the residence; (f) the business activity does not alter the character of the neighborhood as a single family residential community; and/or (g) the business activity does not constitute a nuisance or become an annoyance to the neighborhood, or constitute a hazardous or offensive use, or cause the Owner to violate any other provisions of the Governing Documents, or threaten the other residents of the Property, as may be determined in the sole discretion of the Board.

6.2.2. In determining whether the business activity is prohibited, the Board may consider the following factors: (1) whether any structural changes to the Lot have been made; (2) whether the business activity increases the noise levels in the subdivision; (3) whether the business activity increases pedestrian or vehicular traffic within the subdivision; (4) whether outside employees work on the Lot or in the Dwelling; (5) whether the business activity is unobtrusive and not detrimental to the property values within the subdivision; (6) the hours of operation of the business activity; and (7) public safety. The Board has the absolute discretion to determine if the business activity violates this provision of the Declaration and to require that the Owner immediately cease such activity. Notwithstanding the above, the leasing of a Lot is not considered as a trade or business within the meaning of this Section.

Section 6.3. Leasing. An Owner is entitled to rent his/her Lot for single-family residential purposes only. All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners also apply to all occupants of any Lot. Any monetary sanction which is imposed against any Lessee for violations of the Governing Documents will also be imposed against the Owner and will be collected in accordance with the Act. The rental of any guest house is prohibited and occupancy of a guest house is limited to members of the Owner's family, guests or invitees.

Section 6.4. On Site Construction of Dwellings. This Declaration expressly prohibits any mobile homes, manufactured homes, multi-sectional manufactured homes, modular homes, factory-built homes, mobile/component housing or similar units, which are manufactured elsewhere, or a single-family Dwelling constructed elsewhere and moved to the Lot to be attached to either a permanent or movable foundation.

Section 6.5. Common Areas. No structures or Improvements whatsoever, except public utility facilities and common facilities built by the Declarant, can be

erected, placed or permitted to remain on any portion of the Common Areas. However, this does not prevent the Declarant from erecting, placing or maintaining signs, structures, and offices as may be deemed necessary for the operation or development of the Properties.

Section 6.6. Detached Single-family Dwelling. No structure or Improvements will be erected, altered, placed or permitted to remain on any Lot other than one Detached Single-family Dwelling for private use, together with other customary Improvements. A minimum two-car garage with a garage door must be constructed on every Lot before the Dwelling becomes occupied. All garages must remain as garages unless the Declarant approves its use for some other purpose and Owner constructs a replacement garage contemporaneously with the conversion of the existing garage.

Section 6.7. Native Growth Preservation. The native growth on the Lot, including cacti, mesquite and palo verde trees, cannot be destroyed or removed from the Lot, except for the removal of such native growth as may be necessary to construct approved Improvements. No vegetation in the NOS may be removed and no plants that are shown on the Native Plant Preservation Plan (NPP) as having been Preserved in Place (PIP) or Transplanted on Site (TOS) may be removed. If native growth is removed or destroyed without the approval of the ARC, the ARC may require the Owner, at the Owner's expense, to replace the native growth, using the standards in Pima County's Native Plant Preservation Ordinance Standards.

Section 6.8. Nuisances. No nuisances are permitted on any Lot, nor any act which may annoy any resident or which interferes with the peaceful enjoyment or possession and proper use of the Property, by the Owners or other occupants. The term "nuisance" does not include any activities of Declarant, if the activity is reasonably necessary to the development of the Property or the initial construction of any Improvements on a Lot. The Property must be kept in a clean and sanitary condition, and no rubbish, refuse, litter (including food or drink containers), junk, or garbage will be allowed to accumulate either during or subsequent to any development or construction activities, nor can any fire hazard to exist. No unlawful use of a Lot is permitted. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Property, must be observed. No person can disturb the peace by violent, offensive, disorderly or obstreperous conduct. The sewage waste disposal system of each Lot will be maintained at all times in a first-class condition so that it will not be visually offensive and there will not be any offensive odors, sewage overflow, safety or health hazards.

Section 6.9. Sight Line Obstructions. No fence, wall, hedge, shrub or other planting which obstructs sight lines at elevations between three and eight feet above the roadways can be placed or permitted to remain on any corner Lot

within the triangular area formed by the street property lines and a line connecting them at points 25' from the intersection of the street property lines, or if the property corners are rounded, from the intersection of the street property lines extended. No tree will be permitted to remain within these distances from the intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of lines of visibility. If the Board determines that trees, hedges or shrubs are in violation of this provision, the Owner will be notified to correct this condition within 10 days and if the condition has not been cured within that time period, then the Board can take corrective action and charge the costs to the Owner as a Reimbursement Assessment.

- Section 6.10. Damage to Pavement. No pavement cuts may be made on the private streets and roadways within the Property without prior written approval from the ARC. All pavement cuts or damage to the streets or roadways in the Common Areas must be repaired to the same standard as required by Pima County for pavement cuts or damage done to public rights-of-way. The Owner is responsible for any damage to the subdivision streets or roadways and other land in or adjacent to the Property done by any contractor or subcontractor during the course of construction of Improvements on the Owner's Lot. If the damage is not adequately repaired, the Board may repair the damage and charge the costs to the Owner as a Reimbursement Assessment.
- Section 6.11. Back-washing or back-flushing. Adequate provisions or facilities must be established by each Owner to contain all back-flushing, back-washing and similar drainage within each Lot so that the water disposal is not discharged onto the streets or other Lots. Such discharge cannot erode the natural landscape of the Lot and if so, the Board can require the Owner to repair the erosion and if not done within the time set by the Board, the Board can enter the Lot, repair the erosion and charge the costs against the Owner as a Reimbursement Assessment.
- Section 6.12. Signs. No billboards or advertising signs of any kind can be erected, placed, permitted or maintained on any Lot or in any Improvement on the Lot, other than a name plate of the occupant of the Dwelling. However, an Owner may erect one sign on the Lot during the initial construction of the Dwelling and upon its completion, during the initial sale. Such sign cannot exceed six square feet, and must be wood-framed. No subsequent "for sale" or "for lease" signs are permitted. Notwithstanding the above, the Declarant has the right to place any signs on Lots owned by it, if the Declarant determines the signs are necessary to market the Lots for sale by the Declarant.
- Section 6.13. Trees. All trees and other vegetation planted on any Lot must will trimmed to a height which will not materially interfere with the principal views from

neighboring Lots. The Board is the sole determiner of what constitutes a principal view from a Lot and whether the tree or other vegetation materially interferes with that view.

- Section 6.14. Derricks. No derrick or other structure used in boring for oil, natural gas or water can be erected, placed or permitted on any Lot. No oil, natural gas, petroleum or any hydrocarbon product, ore can be stored, produced or extracted from the Lot. No water wells can be drilled on the Lot.
- Section 6.15. Antennas. Subject to the Telecommunications Act of 1996, no exterior antennas or other devices for the transmission or reception of television or radio signals, including satellite dishes, can be erected or maintained if they are Visible.
- Section 6.16. Tanks. No elevated tanks of any kind can be erected, placed or permitted upon any Lot. Any tanks used in connection with any Dwelling on the Lot, including tanks to store gas and fuel oil, gasoline or oil, must be buried or walled in sufficiently to conceal them from the view from other Lots or from the Common Areas.
- Section 6.17. Storage of Personal Property. All clotheslines, equipment and mechanical equipment must be behind screening walls and wood piles, storage piles and construction materials must be concealed at all times, so that they cannot be seen from any other Lot or the Common Areas.
- Section 6.18. Trash. If available, all Owners must subscribe to a trash collection service. Trash or trash containers must be stored so they are not Visible, except on the day the trash is being collected and then only for the shortest time reasonably necessary to effectuate such collection. Each Owner is solely responsible for the fees in connection with the service to each such Owner's Lot. The Association may subscribe to one trash collection service provider, the costs of which either be deemed to be a Common Expense, or will be billed directly to the Owners. In that case, no other service providers will be permitted to enter the Properties.
- Section 6.19. Zoning Laws Prevail. The Property will be subject to any and all rights or privileges which Pima County acquires by dedication or filing the Plat, as authorized by law. No Person can take any action which will conflict with the Pima County Zoning Code. Any act that violates the Pima County Zoning Code is also violation of this Declaration. If any requirements set forth in the Governing Documents conflict from any applicable Pima County requirements, the more restrictive requirements will prevail.
- Section 6.20. Temporary Structures. No temporary structure, including but not limited to a Dwelling, garage, outbuilding, tent or other Improvement can be placed on any Lot.

- Section 6.21. Completion of Construction. No Dwelling can be occupied in any manner during the course of construction, nor at any time before it is completed and the ARC has determined that it complies with the approved plans, and all other provisions of the Governing Documents. The Owner must diligently pursue all construction or remodeling of any Dwelling, garage, building or other Improvement on any part of the Lot. The Board has the sole discretion to determine if the Owner has been diligent in completing construction. Any Improvement that is damaged by fire or other casualty must be repaired, replaced or removed within six months from the date of the damage, unless the ARC has determined, in its sole discretion, that conditions warrant a longer time.
- Section 6.22. Tennis and Other Courts. No tennis or other type of recreational court is permitted on any Lot, unless the ARC determines, in its sole judgment, that the court would not be detrimental to any other Lot.
- Section 6.23. Animals. No animals, birds or fowl of any kind other than the customary domesticated household pets belonging to the Owner or occupant's household can be kept or maintained on any part of the Lot. All dogs must be kept and maintained within walled or otherwise enclosed areas except when accompanied by the Owner and restrained by a leash. An Owner may only keep a reasonable number of domestic pets on any Lot. The Board has the right to require the removal of any animal which it has determined is a nuisance or a danger. The Owner of the animal must immediately remove the animal from the Lot, upon notice from the Board. No horses, mules, donkeys or any farm animals can be kept on any Lot. "Assistive Animals" as defined under the Arizona Fair Housing Act, are excluded from this restriction.
- Section 6.24. Motor Vehicles. Motor vehicles may only be operated on the paved roadways, driveways and parking areas within the Property (except those necessary for construction and Common Area maintenance). No motor driven two or three-wheeled vehicles or off-road vehicles of any type (including but not limited to ATV's, motorcycles, motor driven bicycles, dirt-bikes and minibikes) can be operated on any part of the Property. However, licensed motorcycles used solely on the streets for transportation are permitted.
- 6.24.1. If in the sole opinion of the Board, the operation of any vehicle disturbs any Owner of a neighboring Lot, the Board, after notice and an opportunity for a hearing, has the right to order the removal of or require that the vehicle no longer be operated in the Property. Upon receipt of a written notice to remove and/or cease operating that vehicle from the Board, the Owner of Lot on which the vehicle is located or being operated must promptly comply with the Notice. The Board has the right to order the

- removal from the Property of any licensed or unlicensed vehicle which causes a disturbance because its noise, odors or method of operation.
- 6.24.2. Boats, campers, trailers, recreational vehicles and similar vehicles or equipment cannot be placed on the Lot unless they are kept within an enclosed structure approved by the ARC.
- 6.24.3. No commercial or construction vehicles or equipment can be Visible, except during construction or when such vehicle is used by a Person who is providing services to the Owner of the Lot. A commercial vehicle includes a vehicle used for routine transportation which contains a commercial insignia on the vehicle.
- 6.24.4. No vehicle of any type which is abandoned or inoperable can be kept on any Lot if it is Visible.
- 6.24.5. Lots cannot be used to repair or maintain vehicles. Dismantled vehicles or vehicle parts cannot be kept on any Lot if Visible.
- 6.24.6. All vehicles, except those of short-term guests, including but not limited to passenger vehicles, pickup trucks, vans, off-road vehicles, motorcycles and carryalls, must be placed within an approved enclosed garage. On-street parking is specifically prohibited, except on a short-term basis for social events when there is insufficient temporary parking on the driveway.
- Section 6.25. Aircraft. Helicopters, hot-air balloons, or super-light aircraft cannot land on any Lot or be parked or stored on any Lot.
- Section 6.26. Failure to Maintain. No building, wall, structure or other Improvements on the Lot can fall into disrepair. The Board has the sole right to determine if any Improvement has deteriorated and is no longer in conformity with the general appearance of the Property, or is detrimental to the property values in the Property. The Board will provide written notice to the Owner setting out the required action to repair or improve the Lot and a time within which the Owner must take this corrective action.
- Section 6.27. Owner's Actions Causing Damage. If an Owner causes an event to occur which results in a claim being made on any insurance policy maintained by the Association, the Owner is responsible for the payment of any deductible portion of the insurance, which amount will be a Reimbursement Assessment.
- 6.27.1. No Owner can take any action which may cause any damage to any other Lot.



- 6.27.2. No Owner can allow any condition to exist on his/her Lot which adversely affects the other Lots or other Owners and no Owner can engage in any conduct which causes the premiums for any insurance which is provided by the Association to increase.

## ARTICLE VII EASEMENTS

- Section 7.1. Landscaping Easement. The Declarant establishes and reserves a 10-foot easement in favor of the Declarant and the Association running along the property line of each Lot which is adjacent to a private street as shown on the Plat for the purpose of constructing, installing and maintaining landscaping, monuments, street signs, sidewalks and such other Improvements as the Declarant or the Association deem necessary or desirable, provided that this easement does not obligate either Declarant or the Association to construct or maintain any such landscaping or Improvements in such easement areas.
- Section 7.2. Easements of Enjoyment. Every Owner and Occupant has the right and easement to use and enjoy the Common Areas. Any Owner may, in accordance with the Governing Documents delegate his/her right of enjoyment in the Common Areas to the members of that Owner's family, tenants, guests or invitees.

## ARTICLE VIII DISPUTE RESOLUTION

- Section 8.1. Consensus for Association Action.
- 8.1.1. Except as provided in Section 8.3.3, the Association may not commence a legal proceeding or an action without the approval of at least 2/3rds of the votes of the Members entitled to vote and who are voting in person or by absentee ballot at a duly called meeting of the Association. This Article does not apply to (1) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (2) the imposition and collection of assessments or fines/penalties; (3) proceedings involving challenges to ad valorem taxation; or (4) counterclaims brought by the Association in proceedings instituted against it.
- 8.1.2. Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defects in any portion of the Property, Declarant has the right to be heard by the Members, or any particular Member, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged, or otherwise correct the alleged disputed item.

Section 8.2.

Alternative Method for Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Members of the Association and any Person not otherwise subject to this Declaration but who agrees in writing to submit to this Article VIII (all of which are collectively referred to as a "Bound Parties") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 8.3. ("Claim") to the procedures set forth within this Article VIII.

Section 8.3.

Claims.

8.3.1.

Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the Claim may have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents, (b) arising out of or related in any way to the planning, design, engineering, grading, construction or development of any Lot, the Common Areas, or any other part of the Property, including, without limitation, any claim or cause of action that the Lot, the Common Areas are defective or that any contractors, employees, members, subcontractors, architects, engineers, consultants or similar parties who previously were involved in the planning, design, engineering, grading, construction or development thereof were negligent; and (c) against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to improvements placed on the Project by Declarant or its contractors or agents or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. relating to the design or construction of Improvements; or (d) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, are subject to the provisions of this Article VIII.

8.3.2.

Notwithstanding the above, unless all parties otherwise agree, the following are not Claims and are not subject to the provisions of this Article VIII:

8.3.2.1.any suit by the Association against any Owner to enforce an Owner's obligation to pay Assessments;

8.3.2.2.any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable

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relief) and such other ancillary relief as a court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of the Governing Documents;

8.3.2.3.any suit between or among Owners, which does not include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent from the Governing Documents; and

8.3.2.4.any suit in which any indispensable party is not a Bound Party.

8.3.2.5.the rights of any First Mortgagee or Institutional Guarantor;

8.3.2.6.an employment matter between the Association and any employee of the Association;

8.3.2.7.Any action arising out of any separate written contract between Lot Owners, between the Association and any Owner or between the Declarant and any Owner that would constitute a cause of action under the laws of the State of Arizona regardless of the existence of the Governing Documents.

Section 8.4. Consent to use ADR on Other Matters. With the consent of all Parties any of the above matters identified in this Section may be submitted to the alternative dispute resolution procedures set forth herein.

Section 8.5. Procedures. The procedures for resolution of Claims are as follows:

8.5.1. Notice. Any Bound Party having a Claim (each a "Claimant") against any one or more Bound Party (each a "Respondent") must notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely:

8.5.1.1.The nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

8.5.1.2.The basis of the Claim (i.e., the provisions of the Governing Documents or other authority out of which the Claim arises);

8.5.1.3.The resolution or relief sought by Claimant against Respondent; and

8.5.1.4.The agreement of Claimant to meet personally with Respondent at a mutually agreeable time and place to discuss ways to resolve the Claim.

8.5.1.5. The Claim Notice is binding on the Claimant and may be subsequently amended only to add a new Claim that did not exist or was not discoverable upon reasonable inspection at the time that the Claim Notice was served by Claimant. The submittal of a new Claim after the initiation of the mediation process under Section 10.5.3, below will result in the initiation of an entirely new mediation process as to the new Claim.

8.5.2. Conciliation and Negotiation.

8.5.2.1. Each Claimant and Respondent (collectively, the "Claim Parties" and singularly, a "Claim Party") must make reasonable efforts to meet personally and agree to confer for the purpose of resolving the Claim by good faith and confidential negotiations.

8.5.2.2. Upon receipt of a written request from any of the Claim Parties, accompanied by a copy of the Claim Notice, the Board may appoint a representative to assist the Claim Parties in resolving the dispute by negotiation if, in its discretion, the Board believes its efforts will be beneficial to the Claim Parties or to the welfare of the Property.

8.5.3. Mediation.

8.5.3.1. If the Claim Parties do not resolve the Claim through negotiation within 30 days of the date of the Claim Notice (or within any other period as may be agreed upon by the Claim Parties) ("Termination of Negotiations"), Claimant has 30 additional days within which to submit the Claim to mediation by an independent mediation service designated by the Association or, in absence of a mediation service designated by the Association or in the case of a reasonable objection by Claimant, any dispute resolution center or other independent agency providing similar services in Pima County, Arizona upon which the Claim Parties may mutually agree.

8.5.3.2. If Claimant does not submit on a timely basis the Claim to mediation within 30 days after Termination of Negotiations, Claimant will be deemed to have waived the Claim, and Respondent will be released and discharged from any and all liability to Claimant arising out of the Claim; however, Claimant's failure to submit the Claim for mediation will not release or discharge Respondent from any liability to any Person that is not a Claim Party to the foregoing proceedings.

8.5.3.3. Within 15 days of the selection of the mediator, each of the Claim Parties will provide the mediator and each other with a brief

memorandum setting forth its position with regard to the issues to be resolved. The mediator will have the right to schedule a pre-mediation conference, and all Claim Parties must attend unless otherwise agreed. The mediation will commence within 30 days after the memoranda have been submitted to the mediator and will conclude within 15 days after mediation has commenced unless the Claim Parties mutually agree to extend the mediation period. The mediation will be held in Pima County or any other place that is mutually acceptable to the Claim Parties.

8.5.3.4. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the Claim Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator also may obtain expert advice concerning technical aspects of the dispute, so long as the Claim Parties agree to obtain and assume the expenses of obtaining the expert advice. The mediator does not have the authority to impose a settlement.

8.5.3.5. The expenses of witnesses will be paid by the Claim Party producing the witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, will be borne equally by the Claim Parties unless agreed to otherwise. Each Claim Party will bear its own attorney fees and costs in connection with the mediation.

8.5.3.6. If the Claim Parties do not settle the Claim within 60 days after submission of the matter to the mediation process, or within any period of time as determined reasonable or appropriate by the mediator and the Claim Parties, the mediator will issue a notice or termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice must set forth that the Claim Parties met, the fact that the mediation resulted in an impasse, and the date that the mediation was terminated. At the option of the Claim Parties, the Termination of Mediation Notice may establish, as to matters or items that have been agreed to by the Claim Parties, any undisputed factual findings or agreed resolutions.

8.5.3.7. Within 10 days after the mediator's issuance of the Termination of Mediation Notice, each of the Claim Parties must make a written offer of settlement in an effort to resolve the Claim, the Claimant will make a final written settlement demand ("Settlement

Demand”) to the Respondent, and the Respondent will make a final written settlement offer (“Settlement Offer”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant’s original Claim Notice will constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent will be deemed to have made a “zero”, “take nothing”, or “do nothing” Settlement Offer.

8.5.3.8. All mediation discussions are privileged and confidential in the same manner as described in A.R.S. §12-2238. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediator while serving in such capacity shall be confidential. Stenographic record of the mediation process is not permitted.

8.5.4. Arbitration. If mediation is not successful in resolving any Claim, the Claim will be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the “American Arbitration Association” (“AAA”) as modified or as otherwise provided in this Section. The parties will cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this Section, the arbitrator has the authority to try all issues, whether of fact or law.

8.5.4.1. The proceedings will be heard in Pima County.

8.5.4.2. A single arbitrator will be selected in accordance with the rules of the AAA from panels maintained by AAA with experience in relevant real estate matters or construction. The arbitrator cannot have any relationship to the parties or interest in the Property. The parties to the dispute will attempt to mutually agree on the arbitrator within 10 days after service of the initial complaint on all named defendants. If the parties do not agree on an arbitrator within this 10-day period, AAA will select an arbitrator.

8.5.4.3. The arbitrator will set the earliest convenient date to start the proceedings and will conduct the proceeding without undue delay.

8.5.4.4. The arbitrator may require one or more pre-hearing conferences.

8.5.4.5. The parties are only entitled to limited discovery, consisting of the exchange between the parties of only the following matters; (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the

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property subject to the dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The parties will also be entitled to conduct further tests and inspections. Any other discovery may be allowed by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator will oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

8.5.4.6. The arbitrator does not have the power to award punitive or consequential damages. As further provided below, the right to punitive and consequential damages is waived by the parties. The arbitrator has the power to grant all other legal and equitable remedies and award compensatory damages in the proceeding.

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

8.5.4.8. The arbitrator's award may be enforced as provided to in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

Section 8.6.

Waivers. By accepting a deed or by acquiring any ownership interest in any Lot, the Owners, for themselves, their heirs, personal representatives, successors, transferees and assigns and the Association agree to have any dispute as to a Claim resolved according to the provisions of this Section and waive the right to pursue any dispute as to a Claim in any manner other than as provided in this Section. The Association, each Lot Owner and Declarant acknowledge that by agreeing to resolve all disputes as provided in this Section, they are giving up their respective rights to have such disputes tried before a jury, a judge or an administrative body or tribunal. The Association, each Owner and Declarant further waive their respective rights to an award of punitive and consequential damages relating to a dispute as to a Claim. By accepting a deed or by acquiring any ownership interest in any portion of a Lot, each Owner has voluntarily acknowledged that he/she is giving up any rights such Owner may possess to punitive and consequential damages or the right to a trial before a jury relating to a dispute as to a Claim.

Section 8.7.

Notice to Lot Owners. Prior to obtaining the consent of the Owners in accordance with Section 8.13, the Association must provide written notice

to all Owners that states, at a minimum: (1) a description of the nature of the Claim, (2) a description of the attempts of Declarant to correct the Claim and the opportunities provided to Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Declarant and a description of the relationship between such attorney and member(s) of the Board (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorney fees and expert fees and costs necessary to pursue the Claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against Declarant, (9) an affirmative statement from the Board that the action is in the best interests of the Association and its Members and (10) a statement from the Board that there are no fees paid to the Board or Management Parties as a result of the referral to any attorney or licensed professional. The foregoing notice and disclosure requirements are in addition to any requirements in A.R.S. § 33-2002.

Section 8.8. Notification to Purchasers. If the Association commences a Claim, all Owners must notify prospective purchasers of the Claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.13.

Section 8.9. Litigation/ Attorney Fees. All Exempt Claims must be filed either in the Pima County Superior Court or in the United States District Court for the District of Arizona, Tucson Division (or in the case of actions to collect assessments or fines the amount of which do not exceed the jurisdictional limits, in the Pima County Justice Court). The Courts have the exclusive jurisdiction to resolve such Exempt Claims. In compliance with A.R.S. §12-1364, in any contested dwelling action involving the Lot or the Property, the court will award the successful party reasonable attorney fees, reasonable expert witness fees and taxable costs. If the Settlement Offer, including any best and final offer, is rejected and the judgment finally obtained is less than or less favorable to the Claimant than the Settlement Offer, the Respondent is deemed to be the successful party from the date of the offer or best and final offer. If the judgment finally obtained is more favorable to the Claimant than the Respondent's Settlement Offer or best and final offer, the Claimant is deemed to be the successful party from the date of the offer or best and final offer. This Section does not alter, prohibit or restrict present or future contracts or statutes that may provide for attorney fees.



Section 8.10.

Right to Enter, Inspect, Repair and/or Replace. Within reasonable time after the receipt by a Bound Party of a Claim Notice against that party (the "Respondent"), the Respondent and its agents, contractors, employees, subcontractors, architects, engineers, consultants and similar parties, have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Lot, the Common Areas for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Respondent, to correct, repair and/or replace the alleged deficiency in the planning, design, engineering, grading, construction or development of the residence, the Common Areas which is the basis for the Claim (the "Alleged Defect"). In conducting such inspection, testing, repairs and/or replacement, the Respondent is entitled to take any actions as it deems reasonable and necessary under the circumstances. Nothing set forth in this Article VIII can be construed to impose any obligation on the Respondent to inspect, test, repair, or replace any item or Alleged Defect for which the Respondent is not otherwise obligated under applicable law or any warranty provided by the Declarant in connection with the sale of the Lot. The right of the Respondent and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved is irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Respondent. In no event will any statutes of limitations be deemed tolled during the period in which the Respondent conducts any inspection or testing of any Alleged Defects. The rights in this Section 8.10 are in addition to any rights contained in A.R.S. § 12-1363. TO THE EXTENT OR IN THE EVENT AN OWNER PROHIBITS THE DECLARANT, DEVELOPER PARTIES OR ANY AGENTS, CONTRACTORS, EMPLOYEES, SUBCONTRACTORS, ARCHITECTS, ENGINEERS, CONSULTANTS OR SIMILAR PARTIES, UNDER THE DIRECTION OF DECLARANT OR DEVELOPER PARTIES THE RIGHTS GRANTED BY THIS ARTICLE, ANY CLAIM FOR DAMAGES RELATING TO SUCH MATTER THAT SUCH PARTIES DESIRED TO INSPECT REPAIR OR REPLACE, SHALL BE DEEMED WAIVED IN FULL.

Section 8.11.

Statute of Limitations . If litigation proceedings are not initiated against the Respondent within the time provided above, the Claim will forever be barred. All other applicable statutes of limitation and other limitation periods are waived. Nothing in this Section will be considered to toll, stay or extend any applicable statute of limitation.

Section 8.12.

Owner's Consent to Construction Activities. By accepting a deed to a Lot, each Person consents to Declarant's construction activities, including future potential construction activities, if any, for future construction/renovation, and agrees not to protest such activities or claim such activities are a nuisance or unduly disturb occupancy of the Lots.

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- Section 8.13. Use of Funds. In the event a Claimant initiates any legal action, cause of action or proceeding including, but not limited to, arbitration, mediation or any other alternative dispute resolution against Declarant alleging damages for a Claim, any judgment or award in connection therewith will first be used to correct and/or repair such alleged Claim or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the alleged Claim. Any excess funds remaining after repair of such alleged Claim must be placed into the Association's reserve fund.
- Section 8.14. Approval of Litigation. The Association cannot take any legal action or commence any proceeding including, but not limited to arbitration, mediation or any other alternative dispute resolution involving a Claim, or incur legal expenses, including without limitation, attorney fees, in connection with any Claim without the written approval of the Owners of 75% of the Lots, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or proceeding with monies that are specifically collected from Owners for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. Such funds must be maintained in a separate account specifically designated solely for such purposes.
- Section 8.15. Conflicts. In the event of any conflict between this Article VIII and any other provision of the Governing Documents, this Article VIII controls.
- Section 8.16. Amendment of this Article VIII and the Procedures for Resolution of Claims. Without the express prior written consent of Declarant, neither this Article, nor any procedures for the resolution of Claims which might be contained in the Bylaws may be amended for a period of 20 years from the date of recordation of this Declaration.

**ARTICLE IX  
ENFORCEMENT, DURATION AND AMENDMENT**

- Section 9.1. Enforcement.
- 9.1.1. Each Owner has the right to enforce the Governing Documents by filing a lawsuit against any other Owner or taking any other type of action against that Owner. In the event such an action is filed, the successful party is entitled to an award of reasonable attorney fees, litigation expenses and costs incurred.
- 9.1.2. The Association may enforce the Governing Documents in any manner provided for in this Declaration or by law, including, but not limited to:

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- 9.1.2.1. Imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Owner;
- 9.1.2.2. Exercising self-help or taking action to abate any violation of the Governing Documents;
- 9.1.2.3. Requiring an Owner, at the Owner's expense, to remove any Improvement on the Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition. After Notice stating a time within which the Owner must perform, if the Owner fails to take action, the Board or its designee has the right to enter the Lot, remove the Improvement in violation and restore the Lot to substantially the same condition as previously existed and any such action will not be deemed a trespass;
- 9.1.2.4. Without liability to the Association or Board, prohibiting any Person engaged by an Owner who fails to comply with the terms and provisions of the Governing Documents, from continuing or performing any further activities in the Properties; and
- 9.1.2.5. Filing a lawsuit to enjoin a violation of the Governing Documents, to compel compliance with the Governing Documents, to recover fines or money damages or to obtain such other relief to which the Association may be entitled.
- 9.1.3. The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that by virtue of the Association's finances, possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.
- 9.1.4. All rights and remedies of the Association under the Governing Documents or at law or in equity are cumulative, and the exercise of one right or remedy will not act as a waiver of the Association's right to exercise another right or remedy.
- 9.1.5. No delay or failure by the Association or any Owner in exercising any right under this Declaration or any of the other Governing Documents will operate as a waiver of such right or any other right, and no single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.

- 9.1.6. No claim or cause of action will accrue against the Board, the Association or any Owner for their neglect or refusal to exercise such right of enforcement.
- 9.1.7. Except for judicial construction of the provisions of the Governing Documents, the Association, through its Board, has the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the use restrictions in Article VI. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions of this Declaration is final, conclusive and binding as to all persons and property benefitted or bound by this Declaration.
- Section 9.2. Attorney Fees. If the Association takes any action to enforce the provisions of the Governing Documents, it has the right to recover any attorney fees, litigation expenses, costs or other expenses incurred as a result of such action. These charges become a Maintenance Assessment and may be recovered against the Owner personally or against the Lot. The right to recover such charges exists regardless of whether the Association files suit or is successful in compelling compliance without filing suit.
- Section 9.3. Notice of Violation. An Owner who breaches the Governing Documents, or permits a breach by Persons over whom the Owner exercises either direct or indirect control, will be given written notice of the violation, sent by first class mail to the Owner's address in the records of the Association, advising that the breach must be cured within 10 days from the date the notice is mailed. It is the Owner's responsibility to notify the Association of any change of address. If the breach is not remedied as provided in the notice, the Board has the right to record a Notice of Violation in the office of the Pima County Recorder. A Notice of Compliance will be recorded when the Owner is in compliance. The Notice of Violation, if recorded, may constitute an exception to the title to the Lot and may affect an Owner's ability to convey marketable title to the Lot. Nothing in this paragraph limits any other remedy available in law or equity for breach of these covenants. The remedies of the Association include, but are not limited to, removal of any Improvement constructed without the approval of the ARC, at the Owner's sole expense.
- Section 9.4. Amendments. Until the first conveyance of a Lot within the Property to a consumer, this Declaration may be amended by a recorded instrument duly executed by Declarant, without the need to call a meeting of the Owners or obtaining the consent of the Owners.
- 9.4.1. After the sale of the first Lot to an Owner this Declaration may be amended by recording an amendment with the Pima County Recorder's Office, executed by the President and Secretary of the Association attesting that

the Owners of 60% of the Lots consented to or affirmatively voted in favor of the amendment. The amendment must set forth the text of the amendment, as approved and to be effective must be recorded with the Pima County Recorder's Office.

- 9.4.2. No amendment may discriminate against Declarant without its consent.
- 9.4.3. Any amendment approved during the Development Period requires the written approval of the Declarant.
- 9.4.4. In addition to the provisions set forth above, Declarant has the absolute right, so long as it owns any Lot, to amend this Declaration on its own volition, without the requirement of any further consent or approval, if the amendment is for the benefit of the Owners of the Lots, is made to correct errors or eliminate ambiguities, or to make changes designed to further the intent of the Governing Documents including any elaboration on the existing powers, privileges and restrictions in cases where correction, clarification or elaboration is warranted.

Section 9.5. Term. The provisions of this Declaration run with the land and continue and remain in full force and effect at all times and against all persons.

**ARTICLE X  
RESERVATION OF DECLARANT'S RIGHTS**

Section 10.1. Special Declarant Rights. During the Development Period, the Declarant reserves the right to perform the acts and exercise the following rights ("Special Declarant Rights"):

- 10.1.1. Control of the Association and Board. The Declarant has the right to appoint and remove the members of the ARC and the officers and members of the Board.
- 10.1.2. Completion of Improvements. The Declarant has the right to complete the improvements shown on the Plat.
- 10.1.3. Sales, Management and Marketing. The Declarant has the right to maintain model homes, sales offices, construction material storage areas, construction offices, management offices, and signs advertising the Lots for sale or which are necessary or convenient to the development, sale or operation of the Association. The Declarant also has the right to conduct sales activities within the Property and for any other development in which the Declarant is involved.
- 10.1.4. Construction and Access Easements. The Declarant has the right to use easements through the Lots for the purpose of making improvements and to

provide access. It has the right to construct and complete utilities, roads, landscaping, buildings and all other Improvements in the Property.

- Section 10.2. Grading, Construction and Signs. The Declarant has the absolute right to complete excavation, grading and construction of improvements to any of the Lots, to adjust the boundaries between Lots or the Common Area or to alter the Lots by adding Common Area to such Lots or modify the Common Areas by adding portions of any Lot to such Common Areas, or to construct such additional improvements as the Declarant deems advisable in the course of developing the Property.
- Section 10.3. Additional Reserved Rights. In addition to the Special Declarant Rights, the Declarant also reserves the following additional rights:
- 10.3.1. The Declarant has the right to establish, by dedication or otherwise, utility and other easements for the purpose of roadways, streets, paths, walkways and drainage areas and to create other reservations, exceptions and exclusions for the benefit of the Owners.
  - 10.3.2. The right to amend this Declaration as more fully set forth in Article IX.
  - 10.3.3. The Declarant is not required to apply to and obtain the approval of the ARC for the construction, erection, installation, addition, alteration, repair, change or replacement of any improvement made by, or on behalf of, the Declarant.
- Section 10.4. Rights Transferable. Any Declarant Rights or additional reserved rights created and reserved under this Section for the benefit of the Declarant may be transferred to any Person by an instrument signed by the Declarant and the transferee which describes the rights transferred and recorded with the Pima County Recorder's Office.

## ARTICLE XI GENERAL PROVISIONS

- Section 11.1. Interpretation of the Governing Documents. Except for judicial construction, the Association, by its Board, has the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions of the Governing Documents will be final, conclusive and binding as to all Persons and property benefitted or bound by such Governing Documents.
- Section 11.2. Disputes. In the event of any dispute or disagreement between any Owners concerning the interpretation or application of the Association's Governing Documents, the Board's determination will be final and binding on each

and every Owner. If a majority of the Board is unable to reach a decision concerning any matter which has been submitted to it for a determination, then the matter will be submitted for resolution to the attorney for the Association, whose decision will be binding on all of the Members of the Association.

Section 11.3. Transition from Declarant Control.

11.3.1. At the expiration of the Development Period or such other time as the Declarant turns over the operation of the Association to the Members, it will deliver all corporate books and accounting records to the Board elected by the Members at the Association's office. At the date that all corporate books and accounting records are delivered to the Board and the Declarant has provided notice to the Members of its intent to relinquish control of the Association, the Members have 45 days within which to notify Declarant, in writing, of any claims or disputes regarding the operation of the Association by the Declarant which arose prior to the expiration of the Development Period, including, but not limited to, the maintenance of any Common Areas, the collection of assessments, maintenance of a reserve account, and the performance of any of the Association's obligations under the Governing Documents.

11.3.2. In the event that any claims or disputes have not been presented to the Declarant, in writing, as set forth in this Section such claims and disputes against the Declarant will be deemed as forever waived, relinquished and abandoned.

Section 11.4. Liability of Members of the Board. The individual members of the Board have absolutely no personal responsibility to any Person with regard to any actions taken by them in their capacity as such members so long as they acted in good faith.

Section 11.5. Severability. Any determination by any court of competent jurisdiction that any provisions of the Governing Documents are invalid or unenforceable will not affect the validity or enforceability of any of the other provisions.

Section 11.6. Declarant's Disclaimer of Representations. Notwithstanding anything in this Declaration to the contrary, and except as expressly set forth on the Plat or any other instrument recorded in the office of the Pima County Recorder, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can, or will be, carried out, or that any land now owned or hereafter acquired by Declarant is or will be subject to this Declaration, or that any such land (whether or not it has been subjected to this Declaration)

is, or will be, committed to or developed for any particular use, or that if the land was once used for a particular use, such use will continue in effect.

- Section 11.7. References to the Governing Documents in Deeds. Deeds to and instruments affecting any Lot may contain the terms and conditions in the Declaration by reference, but failure to reference this Declaration in the Deed does not negate the fact that the Declaration is binding upon the current and future Owners, their heirs, executors, administrators, successors and assigns.
- Section 11.8. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances will operate to extinguish, terminate or modify any of the provisions of this Declaration.
- Section 11.9. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant includes any successors or assignees of Declarant's rights and powers provided that Declarant's rights and powers may only be assigned by a written, recorded instrument expressly assigning such rights and powers.
- Section 11.10. Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender will include the feminine and neuter genders; words used in the neuter gender will include the masculine and feminine genders; words in the singular will include the plural; and words in the plural will include the singular.
- Section 11.11. Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions or to be used in determining the intent or context.
- Section 11.12. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board is required to be given to any Owner then, unless otherwise specified the notice requirement is satisfied if mailed by first class mail to the property address or to any other address furnished to the Association by the Owner. Any notice, demand or correspondence to the Association must be sent to the Association's address as reflected in the records of the Arizona Corporation Commission.
- Section 11.13. Records. The Association will maintain true and correct books and accounting records at its sole cost and expense in accordance with generally accepted accounting principles. Such books and accounting records, together with copies of the Governing Documents, are available for inspection by all Owners.



- Section 11.14. Indemnification. The Association will indemnify to the fullest extent allowed by law every officer, director and committee member, against any and all expenses, including attorney fees, reasonably incurred by or imposed upon, any officer, director or committee member, in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or director. The Association will, as a common expense, maintain adequate general liability and Officer's and Director's Liability Insurance to cover this obligation.
- Section 11.15. Binding Effect. By accepting a deed or acquiring any ownership interest in any Lot, each person or entity, for himself, or itself, his heirs, personal representatives, successors, transferee and assigns, bind him/herself and his/her heirs, personal representatives, successors, transferee and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations which have been imposed by this Declaration and any amendments thereto. In addition, each such person doing so acknowledges that this Declaration sets forth a general scheme of the Property and evidences his/her intent that all restrictions, conditions, covenants, and rules and regulations contained herein or promulgated hereafter by the Association will run with the land and be binding upon all subsequent and future Owners, grantees, purchasers, assignees and transferee thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration will be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.
- Section 11.16. Waiver. No delay or omission on the part of the Declarant, or the Association, or the Owner of other Lots in exercising any right, power or remedy is a waiver or acquiescence in any breach and no right of action will accrue nor will any action be brought or maintained by anyone as a result of any breach or for imposing restrictions herein which may be unenforceable.
- Section 11.17. Approvals. Whenever in this Declaration the approval or consent of the Declarant, ARC or the Approving Agent is required or is permitted to be given, such approval or consent may be granted or withheld by the Declarant, ARC or the Approving Agent for any reason or no reason in the sole exercise of its discretion.
- Section 11.18. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order will not affect any others which will remain in full force and effect.
- Section 11.19. Annexation of Additional Property. Declarant may, in its sole discretion, at any time and from time to time up to a date which is 10 years after the date

this Declaration is recorded, annex any additional property into Rinconado Estates subject to the written consent of the owner of that additional property to be annexed, if Owned by a person other than the Declarant. To effectuate the annexation, a Declaration of Annexation will be executed by the Declarant and the Owner of the additional property and recorded in the Office of the Pima County Recorder. The recordation of the Declaration of Annexation will constitute and effectuate the annexation of the additional property into Rinconado Estates making such additional property and the Owner thereof subject to this Declaration and the jurisdiction of the Association.

Section 11.20.

Conflicts. If there is any conflict between this Declaration, the Articles, the Bylaws, the Rules or the Design Guidelines, the provisions of this Declaration will prevail. Thereafter, priority will be first given to the Articles, then to the Bylaws, then to the Design Guidelines and then to the Rules. Until termination of the Development Period, any dispute or claim involving the meaning or interpretation of this document will be submitted to Declarant in writing and determined by the Declarant. The decision of the Declarant will be final and binding. Thereafter, except for judicial construction, the Association has the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions of the Governing Documents will be final, conclusive and binding on all Owners.

IN WITNESS WHEREOF, the Declarant executes this Declaration on the 21<sup>st</sup> day of NOVEMBER, 2006.

Declarant: Fidelity National Title Agency, Inc, an Arizona corporation, as Trustee under Trust No. 60251, ONLY AND NOT OTHERWISE  
Martha L. White  
Trust Officer

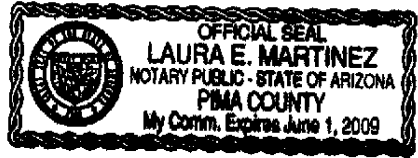
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State of Arizona            )  
  ) ss:  
County of Pima             )

This instrument was subscribed and sworn before me on this 21<sup>st</sup> day of NOV, 2006 by MARTHA L. HILL, as Trustee under Trust No. 60251, Fidelity National Title Agency, Inc, an Arizona corporation.

*Laura E. Martinez*  
\_\_\_\_\_  
Notary Public

My commission expires: June 1, 2009



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