



When recorded mail to:

Linda Yoss  
Hunter Creek Ranch Hoa  
928 Memory Lane  
Payson, AZ 85541



CAPTION HEADING:

Declaration of Restrictions

DO NOT REMOVE

This is part of the official document.



SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HUNTER CREEK RANCH

This Second Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for Hunter Creek Ranch Homeowners Association, Inc., an Arizona nonprofit corporation (the "Association").

WHEREAS, that certain Restated Declaration of Covenants, Conditions and Restrictions of Hunter Creek Ranch was recorded in Docket 663, pages 802-869, Records of Gila County, Arizona as amended by the instruments recorded in Docket 665, pages 456-459, and in Docket 666, pages 473-475, records of Gila County, Arizona as further amended by the instruments recorded in Docket 772, page 556 records of Gila County, Arizona (together, the "Original Declaration"); and

WHEREAS, pursuant to the Original Declaration, the Original Declaration may be amended by a written instrument signed by not less than sixty-seven percent (67%) of the total votes in the Association; and

WHEREAS, this Declaration has been approved by not less than sixty-seven percent (67%) of the total votes in the Association.

NOW, THEREFORE, the Original Declaration is of no further effect and is hereby deleted, amended and restated by the Declaration as follows:

ARTICLE 1

DEFINITIONS

1.12 "**Association Rules**" means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

1.13 "**Board**" means the Board of Directors of the Association.

1.14 "**Bylaws**" means the Bylaws of the Association, as they may from time to time be amended.

1.15 "**Common Area**" means (i) all Association Land; (ii) all land, and the Improvements situated thereon, within the Project which the Declarant indicates on a Recorded subdivision plat, Recorded Tract Declaration or other Recorded instrument is to be conveyed to the Association for the benefit and use of the Members in accordance with the Declaration; (iii) all land, and the Improvements situated thereon, situated within the boundaries of a Lot or Parcel which is designated on a Recorded subdivision plat recorded by the Declarant or approved by the Association as land which is to be improved, maintained, repaired and replaced by the

Association; (iv) all land and the Improvements situated thereon, within the Project which is a Recorded subdivision plat, Recorded Tract Declaration or other Recorded instrument is to be used for landscaping, drainage or water retention or flood control for the benefit of the Project; and (v) all land, and the Improvements situated thereon, which is designated in a Recorded Tract Declaration or a recorded amendment to this Declaration as Parcel Assessment Areas.

1.16 **“Common Expenses”** means expenditures made by and the financial liabilities incurred by the Association, together with any allocations to reserves, including, and not limited to, all costs and expenses incurred by the Association in maintaining, operating, repairing and replacing (i) facilities, pipes and equipment necessary to supply potable water services and sewerage services to the Lots, Parcels, and Common Areas; (ii) Common Area improvements; and (iii) Common Area roads.

1.17 [DELETED]

1.18 [DELETED]

1.19 [DELETED]

1.20 **“Declaration”** means this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions as it may be amended from time to time.

1.21 **“Exempt Property”** means (i) all land and improvements owned by, or dedicated to and accepted by, the United States, the State of Arizona, the County of Gila, Arizona, or any political subdivision thereof, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective; (ii) all Association Land; and (iii) all Neighborhood Common Area.

1.22 **“Improvements”** means any Residential Unit, building, fence, wall or other structure, or any road, driveway, parking area, or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

1.23 **“Land Use Classification”** means the classification established by this Declaration or any Tract Declaration which designates the type of improvements which may be constructed on a Lot or Parcel and the purpose for which such Lot or Parcel, and the improvements situated thereon, may be utilized.

1.24 **“Lessee”** means the lessee or tenant under a lease, oral or written, of any Lot or Parcel including an assignee of a lease.

1.25 **“Lot”** means (i) a portion of the Project intended for independent ownership and use and designated as a lot on the Project Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.26 **“Maintenance Standards”** means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the



Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.27 **“Member”** means any person who is a Member of the Association.

1.28 **“Membership”** means a membership in the Association.

1.29 [DELETED]

1.30 [DELETED]

1.31 [DELETED]

1.32 [DELETED]

1.33 **“Owner”** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot or Parcel. Owner shall not include (i) Persons having an interest in a Lot or Parcel merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Lot or Parcel. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 et. seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots or Parcels the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustee shall be deemed to be the Owner. In the case of the Lots or Parcels the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.34 **“Parcel”** means each area of real property in the Project, and all Improvements situated thereon, under the same ownership, except for Lots.

1.35 **“Parcel Assessment”** means an assessment levied against less than all of the lots and Parcels in the Project pursuant to Section 6.4 of the Declaration.

1.36 **“Parcel Assessment Area”** means any part of the Project designated in a Tract Declaration as an area which is to be maintained, repaired and replaced by the Association but which is for the sole or primary benefit of the Owners of less than all of the Lots and Parcels in the project.

1.37 [DELETED]

1.38 **“Person”** means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.



1.39 **“Property or Project”** means the real property described on Exhibit A attached to this Declaration together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

1.40 **“Project Documents”** means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

1.41 **“Project Plan”** means the Plat for Hunter Creek Ranch recorded in Map File No. 614,614-A, 614-B, 614-C and 614-B, records of Gila County, Arizona and all amendments, supplements and corrections thereto.

1.42 **“Purchaser”** means any Person who by means of voluntary transfer become the Owner of a Lot or Parcel.

1.43 **“Recording”** means placing an instrument of Public record in the office of the County Recorder of Gila County, Arizona, and **“Recorded”** means having been so placed of public record.

1.44 **“Rental Apartments”** means dwelling units within a permanent improvement consisting of four or more commercially integrated dwelling units under single ownership upon one or more contiguous Parcels, each of which is designed and utilized, other than as a hotel or some other transient basis, for rental or leased residential purposes to non-owners on a non-cooperative basis.

1.45 **“Resident”** means each individual occupying or residing in a dwelling unit.

1.46 **“Residential Unit”** means any building, or portion of a building, situated on a Lot and designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

1.47 **“Single Family”** means a group of one or more individuals who maintain a common household in a Residential Unit.

1.48 **“Special Assessment”** means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.

1.49 **“Tract Declaration”** means a declaration recorded pursuant to Section 2.2 of the Declaration.

1.50 **“Visible From Neighboring Property”** means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.

END OF ARTICLE 1



## ARTICLE 2

### PLAN OF DEVELOPMENT

2.1 **Purpose of the Declaration.** This Declaration is being recorded to reconfirm the general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, creates prohibitions that benefit the Members and Association, and is enforceable by the Association and all Owners. The Lots and Parcels and the Membership in the Association shall not be separately conveyed or encumbered.

2.2 **Tract Declaration.** A Tract Declaration may (i) designate Common Areas, and Parcel Assessment Areas; (ii) establish the Land Use Classification for the property; and (iii) impose such additional covenants, conditions and restrictions as may be appropriate for the property subject to the Tract Declaration. If a Tract Declaration designates any Parcel Assessment Areas, the Tract Declaration shall also designate the Lots and Parcels which solely or primarily benefit from the Parcel Assessment Area and which shall be subject to a Parcel Assessment pursuant to Section 6.4 of this Declaration. A Tract Declaration may only be amended by a written instrument executed by (i) the Owners of all of the Lots and Parcels subject to the Tract Declaration and (ii) the Association.

2.3 **Disclaimer of Representations.** Association makes no representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any property subject to this Declaration will not be changed in the future.

END OF ARTICLE 2

## ARTICLE 3

### LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS



**3.1 Land Use Classification.** The uses for which property within the Project may be used shall be determined by the land use classification of the property as established by a Recorded Tract Declaration covering the property. The Land Use Classifications for Property in the Project shall be: (i) Detached Residential Use; (ii) Apartment Development Use; (iii) Commercial Use and; (iv) Association Land. The Land Use Classification for the Lots designated on the Project Plat as Lots 1 through 159, inclusive, shall be Detached Residential Use. In the event of any conflict or inconsistency between the Land Use Classification for a Lot or Parcel as established by this Declaration or by a Recorded Tract Declaration and statements or notations on the Project Plat with respect to the uses which may be made of property within the Project, the provisions of this Declaration or the Recorded Tract Declaration for the Lot or Parcel shall prevail.

**3.2 Architectural Control.**

**3.2.1** All improvements constructed on Lots or Parcels within the Project shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot or Parcel.

**3.2.2** No excavation or grading work shall be performed on any Lot or Parcel without the prior written approval of the Architectural Committee and after having the lot Blue Staked for utilities locations.

**3.2.3** No Improvement shall be constructed or installed on any Lot or Parcel without the prior written approval of the Architectural Committee.

**3.2.4** No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any lot, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the written approval of the Architectural Committee.

**3.2.5** Any owner desiring approval of the Architectural Committee for any construction, installation addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his Lot or Parcel, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans.

**3.2.6** The approval of the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not



be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.2.7 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.2.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.2.9 The Architectural Committee shall have the right to charge a reasonable fee, based on a published schedule of fees, for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work, pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.2.10 **[DELETED]**

3.2.11 The Board shall have the right to retain a licensed architect as a consultant to the Architectural Committee and to pay such architect a consulting fee. In addition, if an architect or any other person with particular expertise of benefit to the Architectural Committee is a member of the Architectural Committee, the Board shall have the right to pay such person a reasonable fee for his service on the Architectural Committee.

3.2.12 The Architectural Committee may adopt rules and regulations with the approval of the Board identifying categories for repairs to properties that may be undertaken without the consent of the Architectural Committee.

3.2.13 All rules and fee or fine schedules established by the Architectural Committee shall be presented publicly for community comment for at least thirty (30) days and shall require Board approval.

3.2.14 All actions taken by the Architectural Committee are subject to review and suspension by the Board. Members with a dispute to any proposed change or improvement can lodge a complaint with the Board to request review.

3.2.15 All applications, any changes or deletions to plans, Architectural Committee decisions and rationale, and/or results of Board review are to be kept on file by lot number





3.2.16 All meetings of the Architectural Committee are subject to the open meeting provisions of Arizona law. All agendas and meeting minutes shall be made accessible to the community in advance of Architectural Committee meetings.

**3.3 Temporary Occupancy and Temporary Buildings.** No incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. A motorhome, camper, van, recreational vehicle or other similar vehicle may be used as a residence during the period of construction of a Residential Unit if such use is approved in writing by the Architectural Committee. The Architectural Committee shall have the right to impose a limitation on the period of time during which such vehicle can be used as a residence and in no event shall any such vehicle be used as a residence after the completion of construction of the Residential Unit. Temporary buildings, trailers or other structures used during the construction of a Residential Unit, or other building or structure shall be removed immediately after completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve months without prior written permission of the Architectural Committee.

**3.4 Maintenance of Lawns and Plantings.** Each Owner of a Lot or Parcel shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot or Parcel, (ii) any public right-of-way or easement area which abuts or adjoins the Owner's Lot or Parcel and which is located between the boundary line of his Lot or Parcel and the paved area of any street, sidewalk, bike-path or similar area, and (iii) any non-street public right-of-way or easement area adjacent to his Lot or Parcel, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (i) The Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by a Recorded instrument as provided in Section 6.0 of this Declaration; or (iii) Gila County or any municipality having jurisdiction over such property assumes responsibility, for so long as the Association, Gila County or such municipality assumes or has responsibility.

**3.5 Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, Parcel or other property for greater than 1 week, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot, Parcel or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot, Parcel or other property. Normal construction activities and parking in connection with the building of improvements on a Lot, Parcel or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots, Parcels or other property shall kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate for greater than 1 week, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural



committee. In addition, any construction equipment and building materials stored or kept on any Lot, Parcel or other property during construction of improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its reasonable discretion shall have the right to determine the existence of any such nuisances.

**3.6 Diseases and Insects.** No Person shall permit anything or condition to exist upon any Lot, Parcel or other property which shall induce, breed or harbor infectious plant disease or noxious insects.

**3.7 Repair of Buildings.** No Residential Unit, building structure on any Lot, Parcel or other property shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.2 of this Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt, or shall be demolished.

**3.8 Antennas.** The Architectural Committee shall have the authority to establish requirements for Antennas, Satellite Dishes, etc.

**3.9 Mineral Exploration.** No Lot, Parcel or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or earth substance of any kind.

**3.10 Trash Containers and Collection.** No garbage or trash shall be kept on any Lot, Parcel or other property, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be visible from Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots, Parcels and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot, Parcel or other property.

**3.11 Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot, Parcel or other property so as to be visible from Neighboring Property.

**3.12 Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot, Parcel or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.



3.13 **Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot, Parcel or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, Street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

3.14 **Health, Safety and Welfare.** In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents, the Board may make rules restricting or regulating their presence in the Project as part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots, Parcels or other property as part of the Architectural Committee Rules.

3.15 **[DELETED]**

3.16 **Incidental Use.** The Architectural Committee may approve uses of property within a Land Classification which are incidental to the full enjoyment by the Owner of the property within the Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Architectural Committee may wish to impose, in its reasonable discretion, for the benefit of the Project as a whole.

3.17 **Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or Parcel having a Land Use Classification of Single Family Residential Use, or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential unit (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project, (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other residents in the Project, and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended or does generate a profit, or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.18 **Animals.** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot or Parcel having a Land Use Classification of Single Family Residential Use or Cluster Residential Use, except for (i) two dogs, cats, parakeets or similar household birds may be



kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes; (ii) horses may be kept on any of Lots 91, 92, 93, 94, 95, 96, 97 and 102 provided such horses are only kept for personal use and are not kept or raised for commercial purposes; and (iii) horses may be kept on a Lot or Parcel if the Tract Declaration covering such Lot or Parcel specifically permits the keeping of horses on the lot or Parcel; provided such horses are kept only for personal use and are not kept or raised for commercial purposes. No dog, cat or other pet shall be permitted to run at large, except that a dog shall be permitted to leave an Owner's Lot if such dog is at all times kept on a leash and is under the direct control of the Owner or any other individual who is capable of controlling the dog. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Architectural Committee shall conclusively determine in its reasonable discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration. No animal, bird, fowl, poultry or livestock may be kept or maintained on any Lot or Parcel having a Land Use Classification other than Detached Residential Use or Cluster Residential Use without the prior written approval of the Architectural Committee.

**3.19 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Parcel, except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or other improvements; and (ii) that which Declarant or the Association may require for the operation and maintenance of the Project.

**3.20 Signs.** No signs or flags whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs or flags) which are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel except:

3.20.1 Signs required by legal proceedings;

3.20.2 Two (2) identification signs for each Residential Unit provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee;

3.20.3 [DELETED]

3.20.4 Such signs and flags as authorized by A.R.S. Section 33-1808 including and not limited to For Sale, For Lease, and Open House signs;

3.20.5 Signs of builders of Residential Units or other buildings or improvements on any Lot or Parcel approved from time to time by the Architectural Committee as to number, size, colors, design, message content, location and type;



3.20.6 Such construction job identification signs during the period of construction, business identification signs and subdivision identification signs which are in conformance with the requirements of Gila County or any municipality having jurisdiction over the property and which have been approved in writing by the Architectural Committee as to size, colors, design, message content and location.

**3.21 Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot or Parcel shall be further subdivided or separated into smaller lots or parcels by any Owner and no portion less than all of any such Lot or Parcel shall be conveyed or transferred by any Owner, without the prior written approval of the Board. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other person other than the Association against any Lot or Parcel without the provision thereof having been first approved in writing by the Board. No Application for rezoning, variances or use permits pertaining to any Lot, Parcel or Neighborhood Common Area shall be filed with any governmental authority by any person other than the Association unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration and any Tract Declaration.

**3.22 Mobile Homes.** No mobile home may be parked, maintained, constructed, reconstructed or repaired on any Lot, Parcel or Common Area or on any street.

**3.23 Motor Vehicles.**

3.23.1 No automobile, motorcycle, motorbike, truck, camper, recreational vehicle or other motor vehicle of any kind shall be parked or kept on any public or private street in the Project. Boats, boat trailers, motorhomes, campers and recreational vehicles must be parked either on driveways or in garages or carports or in the side or back yards of a Lot or Parcel. The Board has the authority to adopt rules relative to vehicle operation on Lots, Parcels, or Common Areas.

3.23.2 Except for emergency vehicle repairs, no automobile, motorcycle, motorbike or other motor vehicle of any kind shall be constructed, reconstructed or repaired on any Lot or The Common Area. No inoperable vehicle or vehicle which because of missing fenders, bumpers, hoods or other parts or because of lack of proper maintenance is, in the reasonable opinion of the Architectural Committee, unsightly or detracts from the appearance of the Project shall be stored, parked or kept on any Lot or the Common Area.

**3.24 Towing of Vehicles.** The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motor bike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If any vehicle or equipment is owned by an Owner any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce



collection of suit amounts in the same manner provided for in their Declaration for the collection of Assessment.

**3.25 Variances.** The Architectural Committee may, at its reasonable discretion and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 or in any Tract Declaration if the Architectural Committee determines that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessee and Residents of the Project and is consistent with the high quality of life intended for residents of the Project. All variances must be reviewed in an open meeting of the Architectural Committee and are subject to review by the Board.

**3.26 Change of Use of Common Area.** Upon (i) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners and (ii) the approval of such resolution by Members casting more than sixty-seven percent (67%) of the votes entitled to be cast by Members who are present in person or cast a ballot by absentee ballot, email, facsimile, or other electronic means at a meeting called for such purpose and who are entitled to use such Common Area under the terms of this Declaration, the Board shall have the power and the right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners and shall be consistent with any deed restrictions or zoning regulations restricting or limiting the use of the Common Area.

**3.27 Drainage.** No Residential Unit, structure, building, landscaping, fence wall or other Improvement shall be constructed, installed placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the project or for any Lot or Parcel as shown on the drainage plans on file with the county or municipality in which the Project is located.

**3.28 Removal of Trees and Firewise Landscape Maintenance.** The Association supports homeowner adherence to fire safe practices as endorsed by firewise.org. The Board and/or the Architectural Committee have the authority to adopt rules related to tree and shrub removal. Live trees over 8" in diameter shall not be removed without the prior written consent of the Architectural Committee or the Board.

### END OF ARTICLE 3

### ARTICLE 4

### EASEMENTS

#### 4.1 Owners' Easements of Enjoyment.



4.1.1 Subject to the rights and easements granted to the Declarant in Section 4.4 and 4.5 of this Declaration, every Member, and any person residing with such member, shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot and Parcel, subject to the following provisions: (i) the right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board. Unless otherwise required by zoning stipulations or agreements with Gila County or any municipality having jurisdiction over the Project, or any part thereof, effective prior to the date hereof or specified on a Recorded subdivision Plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners representing three-fourths (3/4) of the total votes in the Association agreeing to such dedication or transfer has been recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities easements and rights-of-way which are intended to benefit the Project and which do not have any substantial adverse effect on the enjoyment of the Common Area by the Members. (ii) the right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or Residents.

4.1.2 If a Lot or Parcel is leased or rented by the Owner thereof, the Lessee and the members of his family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot or Parcel shall have no right to use the Common Area until the termination or expiration of such lease.

4.1.3 The guest and invitees of any Member or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area provided they are accompanied by a Member or other person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to limit the number of invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of recreational facilities by guests and invitees to certain specified times.

4.2 **Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area, Lots, Parcels and other property for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area, Lots, Parcels and other property but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area, Lots Parcels and other property except as initially designed, approved and constructed by the Declarant or as approved by the Board.

4.3 **Easements for Ingress and Egress.** There is hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over through and across such



driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and occupants of the Lots and Parcels and their guests, families, tenants and invitees.

4.4 [DELETED]

4.5 **Association Easements.**

4.5.1 The Association shall have the right and easement on and over the Common Area to construct all buildings and improvements the Association may deem necessary and to use the Common Area and any Lots, Parcels and other property owned by the Association for construction or renovation related to purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

4.5.2 The Association shall have the right and an easement upon, over, and through the Common Areas as may be reasonably necessary for the purpose of discharging its obligation and exercising the rights granted to or reserved by the Association by this Declaration.

4.6 **Easement in favor of Association.** The Lots, Parcels and Neighborhood Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.6.1 For inspection of the Lots, Parcels and Neighborhood Common Area in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.6.2 For inspection, maintenance, repair and replacement of the Common Area accessible only from such Lots, Parcels or Neighborhood Common Area;

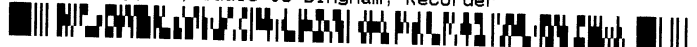
4.6.3 For correction of emergency conditions in one or more Lots, Parcels or Neighborhood Common Area or casualties to the Common Area;

4.6.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committee appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

4.6.5 For the inspection of the Lots, Parcels and Neighborhood Common Area in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and other occupants of the Lot, Parcel or Neighborhood Common Area.

4.6.6 Any inspection of Member properties, except in an emergency, shall require the prior reasonable notification of the Member.

END OF ARTICLE 4





## ARTICLE 5

### THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 **Formation of Association.** The Association shall be a nonprofit Arizona Corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

5.2 **Board of Directors.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board during a duly noticed open meeting.

5.3 **The Association Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt amend and repeal rules and regulations pertaining to (i) the management, operation and use of the Common Area including, but not limited to, any recreational facilities situated on the Common Area, (ii) traffic and parking restrictions including speed limits on private streets within the Project, (iii) standards for maintenance of Common Areas, Lots and Parcels within the Project or (iv) any other subject within the jurisdiction of the Association. In the event of a conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.3.1 All rules and fees or fine schedules established by the Board shall be presented publicly for community comment for at least thirty (30) days and shall require board approval.

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

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





5.6 [DELETED]

5.7 **Membership in the Association.** Every Owner of a Lot or Parcel which is Assessable Property shall be a Member of the Association. Each such Owner shall have the following number of Memberships in the Association;

5.7.1 One (1) Membership for each Lot owned by the member;

5.7.2 In the case of a Parcel subject to a Tract declaration applicable only to that Parcel, the Owner of the parcel shall have the number of Memberships assigned to such Parcel in the Tract Declaration for such Parcel.

5.7.3 In the case of a parcel subject to Tract Declaration which is also applicable to other Lots or Parcels, the number of Memberships which the Owner of the Parcel shall have shall be computed in accordance with the following formula:

A = the number of Memberships assigned in the Tract Declaration to all property subject to the Tract Declaration.

B = the number of Lots subject to the Tract Declaration.

C = the net square footage of the Parcel.

D = the net square footage of all Parcels subject to the Tract Declaration.

E = the number of Memberships for the Parcel.

$$A - B \times C = E$$

5.7.4 In the case of a Parcel with respect to which no Tract Declaration has been recorded the Owner of the Parcel shall have one Membership for each 26,000 gross square feet in the Parcel.

5.8 **Votes in the Association.**

5.8.1 Each Owner shall be entitled to one (1) vote for each Membership held by such Owner.

5.8.2 [DELETED]

5.9 **Voting Procedures.** No change in the ownership of a Lot or Parcel shall be effective for voting purposes unless and until the Board is given actual written notice of such

change and is provided satisfactory proof thereof. The vote for each such Lot or Parcel must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot or Parcel is owned by more than one person or entity they must designate someone to the Board in writing to be responsible to cast the vote. In the event that owners fail to designate an individual to cast the vote, the Board shall randomly select one of the owners of record to cast the vote. Any vote cast by someone in conflict to the designated person shall be disregarded. If any Member casts a vote representing a certain Lot or Parcel, it will thereafter be conclusively presumed for all purposes that they were acting with the authority and consent of all other Owners of the same Lot or Parcel unless objection thereto is made at the time the vote is cast. In the event that more than one vote is cast by the designated Member for a particular Lot or Parcel, none of the votes shall be counted and all of the votes shall be deemed void. The Board shall permit votes to be cast in person and by absentee ballot and may provide for votes to be cast by email, facsimile, or other electronic means.

**5.10 Transfer of Membership.** The rights and obligations of any Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owners Lot or Parcel, and then only to the transferee of ownership to the Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership appurtenant to said Lot or Parcel to the new Owner thereof. Each purchaser of a Lot or Parcel shall notify the association within ten (10) days after he becomes the Owner of a Lot or Parcel. The Association may require the Purchaser of a Lot or Parcel to pay to the Association a disclosure fee consistent with A.R.S. 33-1806C in an amount to be set by the Board.

**5.11 Architectural Committee.** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The Architectural Committee shall be appointed by and are subject to removal by the Board. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

**5.12 Termination of Contracts and Leases.** Neither the Board nor any officer of the Association shall cause the Association to enter into any material contract for the provision of goods and services without the inclusion of a 30 day "with or without cause" termination provision and an option for termination on the annual anniversary of the contract.

**5.13 Conflicts of Interest.** If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of



directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this section is void and unenforceable.

**5.14 Open Meeting Requirements.** All meetings of the Board, the Members and any committee established by the Board shall be open to all Members of the Association and/or the designated representative of a Member; and all Members and representatives of a Member shall be permitted to attend and speak at appropriate times during the meeting before the Board takes action on a specific item. The Board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a Member or a Member's representative to speak once after the Board has discussed a specific agenda item but before the Board takes formal action on that item. The Board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending meetings of the Board may audiotape or videotape those portions of the meeting that are open to all Members.

**5.14.1** Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following: (i) Legal advice from an attorney for the Board or the Association, (ii) Pending or contemplated litigation, (iii) Personal, health or financial information about a Member of the Association or an individual employee of the Association or an individual employee of a contractor for the Association, (iv) Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the Association or an individual employee of a contractor of the Association who works at the direction of the Association, and (v) Discussion of a Member's appeal of any violation cited or penalty imposed by the Association except on the request of the affected Member that the meeting be held in open session.

**5.14.2** Before entering into any closed portion of a meeting of the Board, or on notice of a meeting that will be closed, the Board shall identify the specific paragraph under Arizona Revised Statute Section 33-1804A that authorizes the Board to close the meeting.

**5.14.3** Notice to the Members of a meeting of the Board shall be given at least forty-eight hours in advance of the meeting by posting on the Association website and sending notice by email to all Members. Any notice of a Board meeting shall state the date, time and place of the meeting. Notice of a meeting shall include the agenda for the Meeting. The failure of any Member to receive actual notice of a meeting of the Board does not affect the validity of any action taken at that meeting. A copy of the agenda shall be available to all Members attending the meeting.

**5.14.4** An emergency meeting of the Board may be called to discuss business or take action that cannot be delayed for the forty-eight hours required for notice. Notice of an emergency meeting must be given to all members of the Board. At an emergency meeting of the Board, the Board may only act on emergency matters. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the Board.



5.14.5 A quorum of the Board may meet by means of a telephone or video conference if a speakerphone or appropriate hardware is available in the meeting that allows Board members and Members of the Association to hear all parties who are speaking during the meeting.

5.14.6 Any quorum of the Board that meets informally to discuss Association business, including workshops, shall comply with the open meeting and notice provision of Arizona Revised Statute Section 33-1804 without regard to whether the Board votes or takes any action on any matters at that informal meeting.

5.15 **Annual Review of the Association.** The Board shall provide for an annual financial audit, review or compilation of the Association per Arizona Revised Statute Section 33-1810. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of each calendar year and shall be made available upon request to the Members within thirty days after its completion.

5.16 **Annual Meeting of Members.** A meeting of the Members of the Association shall be held at least once each year.

5.16.1 **Notice of Member Meetings.** Not fewer than ten nor more than fifty days in advance of any meeting of the Members, the Secretary shall cause notice of a meeting to be hand-delivered or sent prepaid by US mail to the mailing address for each Member or to any other address designated in writing by a Member. The notice shall state the date, time and place of the meeting. A notice of any annual, regular or special meeting of the Members shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the Declaration or bylaws, changes in assessment that require the approval of the Members and any proposal to remove a Director of an officer. Notice of any annual, regular or special meeting of the Members shall also be posted on the Association website at the same time as the mailing. Notice of any annual, regular or special meeting of the Members shall also be sent by email to each Member who has provided an email address to the Association. The failure of any Member to receive actual notice of a meeting of the Members shall not affect the validity of any action taken at that meeting. All meetings of the Members shall be open meetings that comply with the requirements of A.R.S. Section 33-1804A.

5.16.2 **Quorum.** The presence at a meeting of the Members representing not less than fifty-one percent (51%) of the votes in the Association shall constitute a quorum of the Members. For purposes of determining the presence of a quorum, a Member who delivers a vote in person at a meeting and a Member who delivers a vote by absentee ballot or any other method of electronic vote delivery authorized by the Association, including the use of e-mail and fax delivery, shall be counted as attending the meeting of the Members; provided that in no event shall a vote delivered by proxy be authorized or counted for quorum purposes. Any action taken at an annual, regular or special meeting of the Members shall comply with all of the following requirements if absentee ballots or other method of ballot delivery authorized by the Association are used: (i) the ballot shall set forth each proposed action, (ii) the ballot shall provide an opportunity to vote for or against each proposed action, (iii) the ballot shall be valid for only one specified election or meeting of the Members and shall expire automatically at the completion of



the election or meeting, (iv) the ballot shall specify the time and the date by which the ballot must be delivered to the Board in order to be counted, which shall be at least seven days after the date that the Board delivers the unvoiced ballot to the Member, (v) the ballot shall not authorize another person to cast votes on behalf of the Member, (vi) the completed ballot shall contain the name, address and signature of the person voting, and (vii) ballots, envelopes and related materials, including sign-in sheets if used, shall be retained in electronic or paper format and made available for Member inspection for at least one year after the completion of the election.

#### **5.17 Association and Other Records.**

5.17.1 Except as provided in subsection 5.18.2 of this Section, all financial and other records of the Association shall be made reasonably available for examination by a Member or any person designated by the Member in writing as the Member's representative per Arizona Revised Statute Section 33-1805.

5.17.2 Books and records kept by or on behalf of the Association and the Board may be withheld from disclosure to the extent that the portion withheld relates to any of the following: (i) Privileged communications between an attorney for the Association and the Association, (ii) Pending litigation, (iii) Meeting minutes or other records of a session of the Board meeting that is not required to be open to all Members pursuant to ARS Section 33-1804, (iv) Personal, health or financial records of an individual Member of the Association, an individual employee of the Association or an individual employee of a contractor for the Association, including records of the Association directly related to the personal, health or financial information about an individual Member of the Association, an individual employee of the Association or an individual employee of a contractor for the Association, (v) Records relating to the job performance of, compensation of, health records of a specific complaints against an individual employee of the Association or an individual employee of a contractor of the Association who works under the direction of the Association. The Association shall not be required to disclose financial and other records of the association if disclosure would violate any state or federal law.

5.17.3 The Board shall maintain and preserve the books and records of the Association, including and not limited to all the financials and tax returns of the Association, the minutes of all meetings, and all correspondence from attorneys for the Association. The Board may provide for retaining designated books and records of the Association in an electronic form. Any officer and director upon leaving office shall promptly surrender to the incoming Board or its designee all books and records of the Association in the possession of the officer or director leaving office. The books and records of the Association include the files and correspondence of the Architecture Committee.

**5.18 Due Process and Notice to Members.** After notice and an opportunity to be heard, the Board may impose reasonable monetary penalties on Members for violations of the Project Documents. Any action to enforce an alleged violation of the Project Documents that is undertaken by the Board or Architecture Committee, including any notification of an alleged infraction, the opportunity to remediate the alleged infraction, the amount of any late payment



penalty and the right to appeal the alleged infraction, shall comply with the due process and other requirements of Arizona law, including A.R.S. Section 33-1803.

## **5.19 Budgets and Spending Limits.**

5.19.1 During an open meeting of the Board and after input from the Members, the Board shall develop, adopt and publish on the Association website a balanced budget for the upcoming calendar year. The Board is not required to obtain Member approval of any initial balanced budget. A "balanced budget" means the aggregate total of costs and expenses expected to accrue for the upcoming calendar year for operating costs do not exceed the revenue expected to accrue for the Operations Assessment the same period. The balanced budget shall be developed as soon as reasonably possible after the annual meeting of the Members during which the Directors are elected; and the balanced budget shall be adopted before the December 1 deadline for the delivery of the notice of the Annual Assessment. The balanced budget shall include in reasonable detail: (i) each category of anticipated costs and expenses for the operation, maintenance, and special projects for the community at large, including and not limited to the water and wastewater plants (the "operating budget") (ii) contingency for unanticipated or unforeseen expenses, (iii) all planned capital expenditures (the "capital budget"), (iv) the amount of the Annual Assessment for the upcoming year, (v) the amount, if any, planned to be set aside as an addition to the Association's reserves, and (vi) a description of how any capital budget expenditures will be funded, e.g., from withdrawals from the Association's reserves, from operating revenue, or from any planned Special Assessment.

5.19.2 The Board at the next Board meeting shall explain in detail any expenditures that materially exceed the budgeted amount set forth in a previously approved balanced budget.

5.19.3 Each maintenance, repair, capital and service project proposed to be undertaken by the Board the budgeted cost of which would exceed \$10,000 shall require three competitive bids before the Board selects and contracts with the vendor for the project or service, unless the Board establishes that obtaining three competitive bids is infeasible because, e.g., there is an emergency situation, no competitive bids have been received, or because of some other bona fide reason, set forth by the Board in the minutes of a Board meeting. All bids obtained by the Board, the selection criteria used by the Board, and all contract documents shall be promptly posted by the Board on the Association website. Emergencies are defined for purposes of this paragraph as events or circumstances requiring an immediate action by the Board within the next 24 hours in order to preserve human life and/or to protect or repair vital infrastructure of the Association. Vital infrastructure of the Association is defined as water supply and wastewater treatment. Ingress and egress to the community (gate functionality, snow removal, road obstructions, etc.) are considered urgent but are not an emergency. Expenditures intended to address an emergency or an urgent matter are required to be reviewed by the full Board and approved by a majority of Board members.

5.19.4 The disbursement of any Association funds to pay a budgeted expenditure that is recurring in nature and that is less than five percent (5%) of the annual operating budget must be approved by both the treasurer and president of the Association. The disbursement of



any Association funds to pay a budgeted recurring cost or contract greater than five percent (5%) of the annual operating budget shall require the review by the full Board and the approval by a majority of the Board. Recurring contracts must be reviewed by the full Board and re-bid by the Association at least every three (3) years. The Association shall not enter into any contract that exceeds one year in duration unless the contract may be terminated by the Association without penalty upon reasonable notice before each annual anniversary of the contract.

5.19.5 All budgeted expenditures must be reviewed and voted upon by the full Board and the vote of each Director shall be recorded by the secretary of the Association in the next Board meeting minutes.

5.19.6 Budgeted expenditures for projects that are less than three (3) percent of the annual operating budget can be approved by any Board member that is assigned by the Board to supervise execution of the project. Expenditures or contracts for projects greater than three (3) percent of the annual operating budget shall require the review and approval by a majority of Board members.

5.19.7 The terms and conditions of any engagement of legal counsel for the Association shall require the review by the full Board and the approval of a majority of Board members.

## END OF ARTICLE 5

## ARTICLE 6

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 **Creation of lien and personal obligation of Assessments.** Each Owner, by becoming the Owner of a Lot or Parcel, is deemed to Covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot or Parcel and shall be a continuing lien upon the Lot or Parcel against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable Attorneys' fees incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot or Parcel at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

### 6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties





and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot and Parcel which is Assessable Property an Annual Assessment. The amount of the Annual Assessment shall be in the sole discretion of the Board, but the Annual Assessment may not exceed the maximum Annual Assessment for the fiscal year as computed pursuant to Subsection 6.2.3 of this Declaration.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment

6.2.3 The Annual Assessment is made up of two components: a) Annual Operations Assessment and b) Annual Capital Reserve Assessment. The Annual Operations Assessment and the Annual Capital Reserve Assessment shall be summed to calculate the total Annual Assessment (\$1016.00 + \$474.00 = \$1490.00).

6.2.3.1 The maximum Annual Operations Assessment for each fiscal year of the Association shall be calculated as follows: (i) Beginning January 1 of 2020 the maximum Annual Operations Assessment for each Membership shall be \$1016.00; (ii) The Board may, without a vote of the Members, increase the maximum Annual Operations Assessment during each fiscal year of the Association by the greater of (a) up to 5% of the maximum Annual Operations Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index.

For purposes of this subsection, the Consumer Price Index means Consumer Price Index for All Urban Consumers, U. S. City Average, All Items, not seasonally adjusted 1982-1984=100 reference base, published by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), for the most recent twelve (12) month period ending on June 30th of the current calendar year.

In the event the Consumer Index ceases to be published, then the price index which shall be used for computing the increase in the maximum Annual Assessment permitted under this subsection shall be the equivalent, replacement index published by the U.S. Bureau of Labor Statistics. (For example, the CPI for June, 2019 was 256.143 ("X") and the CPI for June, 2018 was 251.989 ("Y"); the percentage increase in the CPI for such twelve month period is computed as follow:  $((X-Y)/Y)*100$ , resulting in a percentage increase of 1.648%, which is less than 5%.)

6.2.3.2 The Annual Capital Reserve Assessment for each fiscal year of the Association shall be calculated as follows: (i) Beginning January 1 of 2020 the maximum Annual Capital Reserve Assessment for each Membership shall be \$474.00; (ii) The Board may, without a vote of the Members, increase the maximum Annual Capital Reserve Assessment during each fiscal year of the Association by the greater of (a) up to 5% of the maximum Annual Capital Reserve Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index as defined in 6.3.1.



6.2.3.3 The maximum Annual Assessment may be increased or decreased by an amount greater than the maximum defined above, only by a vote of Members per section 6.6 at a meeting called for such purpose. Thereafter the adjusted assessment shall be used as the baseline for future calculations of the assessment.

6.2.4 In preparation of the annual budget, the Board shall provide a cost breakdown of expected expenditures allocated into cost categories for 1) water and sewer plant operations and maintenance, 2) the operations and maintenance of the common areas, including common area roads, 3) contingency funds, and 4) capital reserve funds.

### 6.3 Rate of Assessment.

6.3.1 The amount of the Annual Assessment against each Lot or Parcel shall be determined as follows: (i) For purposes of this subsection 6.3.1, the term "Membership assessment" shall mean the amount equal to the total budget of the Association for the applicable Assessment Period divided by the total number of Membership in the Association; (ii) Each Lot and Parcel shall be assessed an Annual Assessment in an amount equal to the number of Memberships or Parcels pursuant to Section 5.7 of this Declaration multiplied by the Membership Assessment.

6.3.2 If the rate of assessment for any Lot or Parcel changes during any Assessment Period pursuant to the provisions of Subsection 6.3.1, the Annual Assessment attributable to such Lot or Parcel shall be prorated between the applicable rates upon the basis of the number of days in the Assessment Period that the Lot or Parcel was assessed under each rate.

6.4 **Parcel Assessments.** All common expense of the Association pertaining to the maintenance, repair and replacement of Parcel Assessment Areas shall be shown separately in the budget adopted by the Board. The Common expenses pertaining to the maintenance, repair and replacement of a Parcel Assessment Area shall be assessed solely against the Lots and Parcels which are benefited by the Parcel Assessment Area as established by the Tract Declarations designating the Parcel Assessment Area. No Common Expenses pertaining to the maintenance, repair or replacement of a Parcel Assessment Area shall be used in computing the Annual Assessments to be levied pursuant to Section 6.2 of this Declaration. Parcel Assessment shall be levied against the lots and Parcels benefited by the Parcel Assessment Area at a uniform rate per membership. If the Board determines during any Assessment Period that Parcel Assessments with respect to any Parcel Assessment Area are, or will, become inadequate to meet all Common Expense pertaining to that Parcel Assessment Area for any reason, including without limitation, nonpayment of Parcel Assessments by Members, it may increase the Parcel Assessment for that Assessment Period and the revised Parcel Assessment shall commence on the date designated by the Board.

6.5 **Special Assessments.** The Association may levy, in any Assessment Period, a special Assessment applicable to that Assessment Period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, including fixtures and personal property related



thereto, provided that any Special Assessment shall have the assent of Members per section 6.6 at a meeting called for such purpose.

**6.6 Notice, Quorum, and Voting for Any Action Authorized Under Article 6.** Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of the Members is required under Article 6 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, votes properly cast by Members entitled to cast sixty percent (60%) of the votes entitled to be cast by Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the proceeding meeting. The assent of 2/3 of the Members is required for passage of any such action.

**6.7 Assessment Period.** The period for which the Annual Assessment and Parcel Assessments are to be levied (the Assessment Period) shall be the calendar year. The Board in its sole discretion from time to time may change the Assessment Period.

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

**6.9 Effect of Nonpayment of Assessments; remedies of the Association.**

6.9.1 Any Assessment, or any installation of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve percent (12%) per annum or the prevailing VA/FHA rate for new home loans, whichever is higher.

6.9.2 The Association shall have a lien on each Lot or Parcel for all Assessments levied against the Lot or Parcel and for all other fees and charges payable to the Association by the Owner of the Lot or Parcel pursuant to this Declaration. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association



may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against the Lot or Parcel the Association shall make a written demand to the to the defaulting Owner for payment of the delinquent assessments, together with interest and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for demand, but any number of defaults may be included within a single demand. If the delinquency is not paid within ten (10) days after the delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot or Parcel of the defaulting Owner.

**6.9.3** The Assessment Lien shall have priority over all liens or claims except (i) tax liens for real property taxes, (ii) assessments in favor of any municipal or other governmental body and (iii) the lien of first mortgage.

**6.9.4** The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and other sums payable to the Association by the Owner of the Lot or Parcel have been paid in full.

**6.9.5** The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and other sums due to the Association in any manner allowed by law including, but not limited to, (1) bringing an action at law against the Owner Personally obligated to pay the delinquent Assessments and such action may be brought without waiving the assessment Lien securing the delinquent assessment or (ii) bringing an action to foreclose the Assessment Lien against the Lot or Parcel in the manner provided by law for the foreclosure of a realty mortgage.. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

**6.9.6** Because a portion of the Assessments paid by the Owners will be used to pay for the cost of water service to the entire project the Association shall have the right, at its option and in addition to any other rights and remedies provide to the Association under this Declaration or at law or in equity, to terminate water service to any Lot or Parcel if any Assessment levied against such Lot or Parcel is more than ninety (90) days delinquent and if the Owner of the Lot or Parcel does not pay the delinquent Assessments within ten (10) days after receiving a notice from the Association advising the Owner of the amount of the delinquent Assessments and advising the Owner that if the delinquent Assessment are not paid within ten (10) days from the date of the notice, water service to the Owner's Lot or Parcel will be terminated by the Association.

**6.10 Evidence of Payment of Assessments.** Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating (i) that all Assessments, interest, and other fees and charges have been paid with respect to any specified



Lot or Parcel as of the date of such certificate, or (ii) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchase of, or lender on, the Lot or Parcel in question.

**6.11 Purposes for which Association's Funds may be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and the Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Areas and public right-of-way and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds under the laws of the State of Arizona or such municipality's charter.

**6.12 Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from the prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes. The board may elect to allocate surplus funds as operations contingency funds or as capital reserve.

**6.13 Water and Sewer Facilities and Charges.** The Association shall own and operate facilities necessary to provide water and sewer service to the Project. Lots and Parcels will not be individually metered for water service. All costs and expenses of the Association operating, maintaining, repairing and replacing the water and sewer facilities shall be part of the Common Expense of the Association and included in the Association budget adopted by the Board of Directors. The Association shall not be liable to any Owner, resident, lessee or other person for any interruption in or cessation of water or sewer service to any Lot or Parcel.

**6.14 Capital Reserve Fund.** To ensure that the Association shall have adequate funds to meet its future capital improvement and maintenance expenses or to purchase the necessary equipment or services, the Association shall maintain accounts as capital reserve funds. The



capital reserve component of the assessment shall be allocated to the capital reserve fund on an annual basis. Capital reserve funds may only be used for capital improvement projects.

#### **6.15 Operations Committee.**

6.15.1 The board may, at their discretion assign an Operations Committee. The Operations Committee will oversee the physical assets of the community and work with the board to recommend when Capital Reserve funds should be spent on capital repairs or replacements. They will develop periodic maintenance schedules to prolong asset life through proper maintenance and will recommend actions to prolong asset life by replacing asset components vs the entire asset.

6.15.2 The Operations Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The Operations Committee shall be appointed by and are subject to removal by the Board.

#### **6.16 Additional Definitions.**

6.16.1 "Capital" means the purchase or maintenance of an asset that the Board determines has an expected value of at least \$2,500 and an expected useful life of at least one year or more. Capital items include roads, gates, hydrants, bridges, and water and sewer plan components such as pumps, tanks, controls, or generators.

6.16.2 "Operations" means annual recurring expenses, including but not limited to legal fees, accounting fees, employee expenses, supplies, snow removal, tree removal, and taxes.

6.16.3 "Contingency" means an amount determined by the Board each year that is set aside to pay unanticipated operating expenses. Unanticipated operating expenses shall be budgeted for each year as part of the operating budget. The contingency fund is separate from the Capital Reserve.

END OF ARTICLE 6

### **ARTICLE 7**

#### **MAINTENANCE**

#### **7.1 Common Areas and Public Right of Way.**

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Common Area, and all improvements located thereon except the Association shall not maintain areas which any governmental entity is maintaining or is obligated to maintain.



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

7.1.3 In the event any subdivision plat, Tract Declaration, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots or Parcels will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of the Project for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having responsibilities in exchange for the payment of such fees as the Association and Owner may agree on.

7.1.4 The Association, in maintaining the common areas, will undertake snow removal. However, in extreme snow events, it may take several days to open up the entire community. When snow events are anticipated, it is the responsibility of the members residing in the community to have supplies (food, medication, heating fuels, etc.) adequate to last several days should they become homebound. Residents that expect to visit during or after a snow event should not expect that roadways will be fully plowed and would need to clear their own driveway space for parking.

7.2 **Lots and Parcels.** Each Owner of a Lot or Parcel shall be responsible for maintaining, repairing or replacing his Lot or Parcel, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot or Parcel which is Common Area. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot or Parcel shall be maintained in a neat and attractive manner.

7.3 **Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of the Common Area or any other area maintained by the Association is caused through the willful or negligent act of any Member, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot or Parcel is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot or Parcel pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

7.4 **Improper Maintenance and Use of Lots and Parcels.** In the event any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots and Parcels or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner which violates this Declaration or any Tract Declaration or Neighborhood Declaration applicable thereto; or in the event the Owner of



any Lot or Parcel is failing to perform any of its obligations under the Project Documents or any Tract Declaration applicable thereto, the Board may enforce the Project Documents in accordance with this Declaration.

**7.5 Common Walls.** The rights and duties of Owners Lots or Parcels with respect to common walls shall be as follows: (i) The Owners of contiguous Lots or Parcels who have a common wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner; (ii) In the event that a common wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild or repair the common wall without cost to the other Owner or Owners; (iii) In the event any such common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense; (iv) notwithstanding any other provisions of this Section, an Owner who, by his negligent or willful act causes any common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements; (v) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title; (vi) in addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners; (vii) in the event any common wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall.

**7.6 Maintenance of Walls other than Common Walls.**

**7.6.1** Walls (other than common walls) located on a Lot or Parcel shall be maintained, repaired and replaced by the Owner of the Lot or Parcel.

**7.6.2** Any wall which is placed on the boundary between a Lot or Parcel and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot or Parcel, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area.

END OF ARTICLE 7

ARTICLE 8

INSURANCE

**8.1 Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot or Parcel to a Purchaser, the Association shall maintain, to the extent reasonably available the following insurance coverage.





8.1.1 Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

8.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insure against for death, bodily injury and property damage arising out of or on connection with the use, ownership or maintenance of the Common Area and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage's with cost liability endorsements to cover liabilities of the Owners as a group to an Owner.

8.1.3 Workman's Compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

8.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recover on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "Severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; (vi) for policies of hazard insurance, a standard mortgage clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.1.6 The Association will maintain directors and officers liability insurance policies.

8.2 **Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.



**8.3 Payment of Premiums.** The premium for insurance obtained by the association pursuant to Section 7.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

**8.4 Payment of Insurance Proceeds.** With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

**8.5 Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of the insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (1) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

END OF ARTICLE 8

## ARTICLE 9

### GENERAL PROVISIONS

**9.1 Enforcement.** The Association or any Owner shall have the right to enforce the Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or the Declarant.

**9.2 Term; Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date of this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing



ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots and Parcels, the Owners of which have seventy five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Gila County, Arizona, a certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association with their signatures acknowledged. Thereupon this Declaration shall have no further force or effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

**9.3 Amendments.**

9.3.1 Except for amendments made pursuant to Subsection 9.3.2, 9.3.3, or 9.3.7 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than sixty-seven percent (67%) of the votes of the Association.

9.3.2 The Board may amend this Declaration or the Project Plat, without obtaining approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the project Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration, laws of the State of Arizona or any federal, state or local governmental agency whose approval of the Project, the Project Plat or the Project Documents is required by law.

9.3.3 [DELETED}

9.3.4 [DELETED]

9.3.5 [DELETED]

9.3.6 Any amendment approved pursuant to subsection 9.3.1 of this Declaration or by the Board pursuant to subsections 9.3.2 or 9.3.7 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Gila County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Association pursuant to Subsection 9.3.2 of this Declaration shall be executed by the Association and shall be recorded with the County Recorder of Gila County, Arizona.

9.3.7 The Board during a duly noticed open meeting may amend the Declaration without the consent of the Members only: (i) to correct an immaterial and manifest drafting error and (ii) to conform the Declaration to a then prevailing Arizona statute but only after receipt of a written opinion of legal counsel to the Association disclosed to the Members that specifies the change and explains the reason for the conforming change.

9.4 **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In absence of any

adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

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

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

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

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

9.9 **Laws, Ordinances and Regulations.**

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

9.9.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

9.10 **References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or Parcel or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be



binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

**9.11 Gender and Number.** Whatever the context of this Declaration so requires, words used in the masculine gender shall include all genders; words used in the neutral gender shall include all genders; words in the singular shall include the plural; and words in the plural shall include the singular.

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

**9.13 Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action is published on the website maintained by the association and via email to the Members. It is the responsibility of each member to maintain current email and mailing address information with the Association. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

**9.14 [DELETED]**

**9.15 Original Declaration Superseded.** This Declaration shall supersede the Original Declaration in its entirety, and upon recording of this Declaration, the Original Declaration shall be of no further force or effect.

Inc.,  
Hunter Creek Ranch Homeowners Association,

An Arizona Corporation.

By: 

Its: President

STATE OF ARIZONA

ss.

County of Gila



