



WHEN RECORDED, RETURN TO:

CITY OF TEMPE - BASKET  
Community Development/Building Safety

110021gmv062019-6-1-1--  
crocfers

**DECLARATION OF COVENANT TO HOLDING PROPERTY AS ONE PARCEL FOR  
BUILDING CODE COMPLIANCE**

THIS DECLARATION OF COVENANT TO HOLD PROPERTY AS ONE PARCEL FOR BUILDING CODE COMPLIANCE ("**Declaration**") is made as of the 18th day of June, 2019 by Ulmus Tempe LLC, an Arizona limited liability company ("**Declarant**").

**RECITALS**

A. Declarant is the Owner (as defined herein) of the property legally described in *Exhibit A* and graphically depicted in *Exhibit A-1* (the "**Property**"), which exhibits are attached hereto and incorporated herein by this reference.

B. Declarant intends to cause all parcels comprising the Property to be held as a single lot or parcel to provide an alternative method of satisfying the City of Tempe's ("**City**") building safety requirements and establishing equivalency for compliance with the provisions of the City Building Code (the "**Building Code**"), and for other purposes as more fully set forth below.

NOW THEREFORE, in consideration of the above premises, the Declarant hereby declares for and on behalf of itself and all current and subsequent Owners (as defined herein) that the Property and all portions thereof are now held and shall from and after the date hereof be acquired, held, conveyed, hypothecated, encumbered, leased, used, occupied and improved subject to the following covenants:

**AGREEMENT**

1. This Declaration shall be permanent to the extent permitted by law, shall be recorded in the official records of Maricopa County against all of the Property, shall be a covenant that runs with the Property, and shall be binding on Declarant, so long as the Declarant owns fee simple title to all or any portion of the Property, and on all parties having any right, title, or interest in the Property described herein, and upon their respective heirs, successors, and assigns as owners ("**Owner**" or "**Owners**") thereof.

2. This Declaration is made and recorded for the benefit of each of the Owners and the City as the enforcing agent of the Building Code.

3. The Building Code regulates integrated developments with multiple property owners, as a single, coordinated building or structure complexes, as if located on a single lot or parcel.

4. This Declaration is enforceable by the City and by each of the Owners. Further, the City and each Owner must approve, in writing, any alteration, elimination, or expiration of this Declaration.

5. This Declaration is made for the purpose of satisfying the requirements of the Building Code and for the purpose of obtaining building permits and/or certificates of occupancy for structures or buildings built or to be built on the parcels comprising the Property. This Declaration does not affect ownership of or any other rights with respect to the Property, except as provided herein, and this

Declaration does not affect the ability of the City to strictly enforce any and all provisions of the Building Code, except such provisions of the Tempe City Code that are the subject of this Declaration.

6. The Owners shall (i) hold all parcels within the Property as a single lot or parcel and (ii) secure the City's consent to development of all of the parcels within the Property as one building site. This Declaration provides an alternative method of satisfying the safety requirements of the Building Code by preserving the safety of existing and future improvements on the Property, and by providing notice that the location and configuration of improvements on the Property as a whole may restrict future construction on any of the parcels constituting such Property. The City will approve the construction of buildings on the various parcels constituting the Property in accordance with existing development plans for purposes of determining compliance with the Building Code, only if the Property is treated as if it was owned by a single person or entity. The Declarant intends by this Declaration to prevent any Owner from undertaking any construction on the Property, after the date hereof, that would cause the improvements to fail to comply with the provisions of the Building Code regarding matters described in subparagraphs 7 (a) through (e), stated below, if the Building Code were applied to the entire Property as if it were a single lot or parcel.

7. To provide an alternative method of meeting the safety requirements of the Building Code without construction of property line fire separation walls or opening protectives, the Declarant hereby declares as follows:

- (a) The Property shall be considered a single lot or tract for the purposes of compliance with all Building Code provisions applicable to integrated developments with multiple owners, including those provisions applicable to attached buildings and ancillary or underground parking garages.
- (b) Because Building Code requirements for integrated developments with multiple owners are based, in part, on building separation or occupancy limitations within the entire complex, Owners will comply with applicable building occupancy separation limitations.
- (c) Because Building Code requirements for integrated developments with multiple owners are based, in part, on the interrelationship of specific fire protection and life-safety systems, the Building Code requirements pertaining to construction type, allowable heights, standpipes, fire alarms, smoke control systems, emergency systems, tenant separations, and exiting systems will be applied to all portions of the complex as if it were located on a single lot or parcel.
- (d) Because the Building Code requires free and unobstructed egress from all portions of all buildings to a public way without crossing boundary lines or adjoining property, and the buildings or structures on, or to be constructed on, the Property would comply with such requirement if they were a single lot or parcel, the Property collectively shall be considered a single parcel for the purpose of egress, and each Owner shall preserve free and unobstructed means of egress across the boundaries of its respective parcels from all required exits to a public way.
- (e) Because the Building Code requires that certain utility systems be located entirely upon the lot or parcel served by such utility systems, and the division of the Property into parcels results in portions of said utility systems being located on a parcel other than the parcel served by said system, each Owner shall, at its own expense, maintain operational and in good repair so much of the electric, water, sewer, automatic fire sprinkler, fire alarm, and ventilation systems located on its parcel as may be necessary for the proper operation and maintenance in good repair of all of said systems on every other parcel in compliance with the Building Code.

8. This Declaration shall not prohibit the expansion, renovation, demolition, or modification of any improvements situated on the Property by an Owner, so long as such improvements are code equivalent or comply with the Building Code and do not cause any other Owner to have an obligation to modify its improvements. In addition, this Declaration shall not restrict an Owner from subdividing, developing, selling, leasing, encumbering, or otherwise disposing of all or part of its interest in a parcel that constitutes the Property as long as the Property is maintained as one parcel in compliance with the requirements of this Declaration.

9. This Declaration shall not be amended, revoked, or altered without the written consent of the Owners of all of the Property and approved by the City and recorded in the official records of Maricopa County, Arizona. If the Building Code is amended to eliminate the Unlimited Area provisions, or if the Property does not require compliance or equivalency with the Building Code, then the City will allow an amendment or termination of this Declaration only if all other applicable building, fire, and land use regulations are satisfied.

10. Each Owner of a portion of the Property shall indemnify, protect, defend, and hold harmless the City, its Council members, the other Owner(s) and their respective officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind; all costs and cleanup actions of any kind; and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Declaration and the design, construction, operation and maintenance of all improvements constructed by such Owner on the Property.

11. This Declaration shall be a covenant running with the land and shall be binding upon the successors and assigns of the Owners. Upon an Owner's sale of a parcel of the Property, such sale shall constitute a full assignment to the new Owner of the transferor Owner's right and obligations hereunder pertaining to such fact, after which the transferor Owner shall have no rights, responsibilities, obligations or liabilities whatsoever hereunder for such parcel of the Property.

12. Each Owner shall have the right to specific enforcement, temporary restraining orders, temporary and permanent injunctions, and all other prejudgment and post-judgment equitable and legal remedies for the breach or threatened breach of this Declaration.

13. The Owners shall pay, defend, indemnify and hold harmless the City and any of its departments, agencies, officers or employees from all damages, claims, liabilities and expenses (including expert witness fees and attorneys' fees) arising out of or resulting in any way from the modifications on construction, maintenance and use of the buildings which are the subject of this Declaration.

14. All exhibits attached to this Declaration are made a part of this Declaration for all purposes.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the date first above written.

*[signature on following page]*

[SIGNATURE PAGE TO DECLARATION OF COVENANT TO HOLD PROPERTY AS ONE PARCEL FOR BUILDING CODE COMPLIANCE]

DECLARANT:

Ulmus Tempe LLC,  
an Arizona limited liability company

By: *William D. Jacoby III*  
Name: William D. Jacoby III  
Its: Managing Member

STATE OF ARIZONA        }  
  } ss.  
COUNTY OF MARICOPA    }

This instrument was acknowledged before me this 18<sup>th</sup> day of June, 2019, by William D. Jacoby III, as managing member of Ulmus Tempe, LLC, on behalf of said limited liability company.

*Gina M. Vallone*  
Notary Public

My Commission Expires:  
11/15/2019



**GINA M. VALLONE**  
Notary Public - Arizona  
Maricopa County  
Expires 11/15/2019

**EXHIBIT A**

**Legal Description of Property**

MARICOPA COUNTY ASSESSOR'S PARCEL NO. 133-09-017

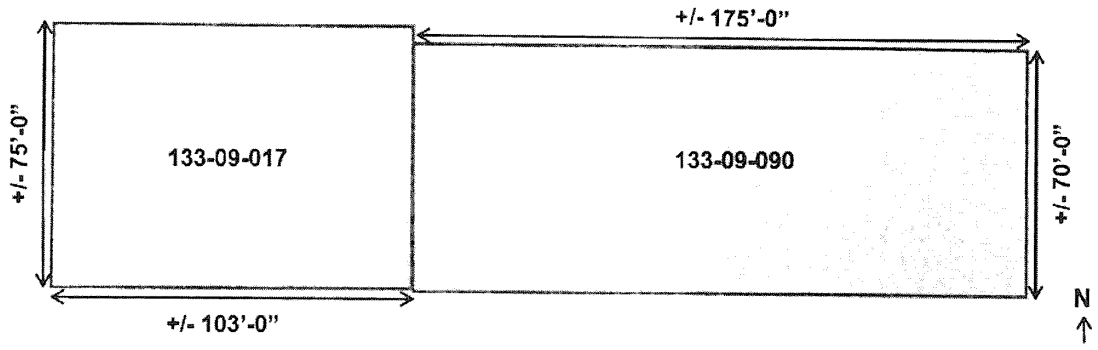
LOT 7, HALSINGBORG, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 41 OF MAPS, PAGE 35.

MARICOPA COUNTY ASSESSOR'S PARCEL NO. 133-09-090

LOT SEVEN (7), BLOCK TWO (2) TERRACE TRACT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, BOOK 37 OF MAPS, PAGE 13.

EXHIBIT A-1

Graphic Depiction of Property



When recorded, return to:

SpenceHOA-58-1-1--  
GarciaC

Brown|Olcott  
120 S. Ash Ave #B101  
Tempe, AZ 85281

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
SPENCEHOA**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SPENCEHOA** (hereinafter termed this "Declaration") is made as of the 8<sup>th</sup> day of AUGUST, 2020, by R&K Tempe LLC, an Arizona limited liability company ("Declarant").

**WITNESSETH:**

A. Declarant is the owner of that certain real property located in the County of Maricopa, State of Arizona, legally described in *Exhibit "A"* attached hereto (the "Initial Property"), which is to be commonly known as "SPENCEHOA"

B. Declarant desires to develop the Initial Property into a planned community of single-family residential townhomes.

C. As part of the various stages of development of the Property, Declarant intends, without obligation, that Lots within the Property will be sold or otherwise conveyed to Owners for the sale of single-family townhomes.

D. Declarant also desires to form a nonprofit corporation for the purpose of benefiting the Property, the Owners, and the Residents, which nonprofit corporation (hereinafter termed the "Association") will (i) acquire, operate, manage and maintain any Common Areas in the Property, (ii) establish, levy, collect and disburse the Assessments and other charges imposed hereunder, and (iii) as the agent and representative of the Members of the Association and of the Owners, and the Residents of the Property, administer and enforce this Declaration and enforce the use and other restrictions imposed on various parts of the Property.



E. Declarant is preparing the necessary documents for the incorporation and organization of the Association and may, without obligation, seek approval of the Property by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or by any other governmental agencies or financial institutions whose approval Declarant deems necessary and desirable (each an "Agency").

F. In order to cause the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements (hereinafter collectively called the "Covenants") to run with the Property and to be binding upon the Property and all Owners and Residents thereof, and their successors and assigns, from and after the date of the Recording of this Declaration, Declarant hereby declares that all conveyances of the Property shall be subject to the Covenants herein set forth.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

#### **ARTICLE 1** **DEFINITIONS**

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

**"Agency"** has the meaning given to it in Recital "E" hereof.

**"Alleged Defect"** shall mean Improvements with respect to which an Owner, the Association or any other Claimant alleges to have been constructed in a manner that is not consistent with good construction and development practices in the area where the Property is located for Improvements similar to those constructed on the Property.

**"Annual Assessment"** shall mean the Assessments imposed for annual expenses pursuant to *Article 8* below.

**"Architectural Committee"** shall mean the committee to be created pursuant to *Article 5* of this Declaration.

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

**"Assessable Property"** shall mean any Lot within the Property. Assessable Property shall not include any portions of the Property which constitute Exempt Property.

**"Assessment"** shall mean the charges levied and assessed each year against each Membership pursuant to *Article 8* hereof.

**"Assessment Lien"** shall mean the lien created and imposed by *Article 8*.

**"Association"** shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration. Declarant hereby reserves the exclusive right to cause such Association to be incorporated. It is the intent of the Declarant that the Association shall be named the "SPENCEHOA"

**"Association Maintained Areas"** shall mean all of the Common Areas and any other portions of the Property or improvements therein which are to be maintained by the Association.

**"Board"** shall mean the Board of Directors of the Association.

**"Builder"** shall mean an Owner which is in the business of constructing and selling completed Dwelling Units to third parties and which intends to construct and sell Dwelling Units on the Lots it owns.

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

**"Capital Improvements"** shall mean those items owned, repaired or maintained by the Association which individually have a life expectancy of three (3) years or greater and exceed \$1,000.00 or greater in value. Items of a like structure which are less than \$1,000.00 when all such items are multiplied by the single value of one like item shall be considered a Capital Improvement.

**"Claimant"** shall mean any Person or entity that has a claim against Declarant relating to the quality of construction of Improvements.

"**Class A Member**" shall have the meaning set forth in *Section 7.2.1* below.

"**Class B Member**" shall have the meaning set forth in *Section 7.2.2* below.

"**Common Area**" and "**Common Areas**" shall mean and consist of any real or personal property which is conveyed by the Declarant or any other Owner to the Association to benefit the Members generally and which is owned by the Association.

"**Common Expenses**" shall mean the expenses of operating the Association.

"**Community Documents**" shall mean the Declaration, Bylaws, Articles of Incorporation and any rules and regulations adopted by the Association.

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

"**Declarant**" shall mean and refer to the above recited Declarant and/or any Person or Persons to whom all or a portion of Declarant's rights reserved to the Declarant under this Declaration and its amendments are assigned pursuant to a written, recorded instrument expressly assigning such rights.

"**Declaration**" shall mean this Declaration of Covenants, Conditions and Restrictions, as amended or supplemented from time to time.

"**Deed**" shall mean a Deed or other instrument conveying the fee simple title in any portion of the Property from one Owner to another Owner.

"**Deficiency Assessments**" shall mean Assessments which are imposed against Lots owned by Declarant pursuant to the provisions of Article 8 below.

"**Guidelines**" shall mean those architectural guidelines established by the Architectural Committee pursuant to the provisions of *Article 5* below.

**"Dwelling Unit"** shall mean any townhouse building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

**"Exempt Property"** shall mean the following parts of the Property:

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

(b) All Common Areas, for as long as the Association is the Owner thereof.

**"First Mortgage"** shall mean a deed of trust or mortgage Recorded against a Lot which has priority over all other deeds of trust or mortgages recorded against the same Lot.

**"Improvements"** shall mean all infrastructure improvements, streets, walls, landscaping, buildings, including Dwelling Units, and other structures constructed by Declarant or its contractors and subcontractors on the Property subject to this Declaration.

**"Initial Property"** shall mean the real property legally described in *Exhibit "A"* attached hereto, which shall initially be all of the real property subject to this Declaration.

**"Lot"** shall mean any part of the Property designated as a residential Lot on a Plat, where the context indicates or requires, any Improvements constructed from time to time thereon.

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

**"Member"** shall mean any Person holding a Membership in the Association pursuant to this Declaration.

**"Membership"** shall mean a Membership in the Association and the rights granted to the Owners pursuant to *Article 7* hereof to participate in the Association.

**"Owner"** shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any portion of the Property but excluding those who hold such title merely as security for the performance of an obligation. In the case of any portion of the Property the fee simple title to which is vested of Record in a seller under a valid and outstanding Agreement or Contract of Sale, as defined in the applicable Arizona statutes, legal title shall be deemed to be in the purchaser under such Agreement or Contract of Sale. In the case of any portion of the Property the fee simple title to which is vested of Record in a trustee pursuant to the applicable Arizona statutes, legal title shall be deemed to be in the Trustor. An Owner shall include any Person who holds record title to any portion of the Property in joint ownership with any other Person or who holds an undivided fee interest in such Lot.

**"Person"** shall mean a natural person, corporation, partnership, limited liability company, trustee or any other legal entity.

**"Plat"** shall mean that Final Plat of SPENCEHOA recorded in Book 41 of Maps, Page 35, Official Records of Maricopa County, Arizona, and any other subdivision plat Recorded with respect to any portion of the Property and with respect to any portion of the Annexable Property which is annexed to the Property pursuant to the provisions of *Article 13* below.

**"Property"** or **"SPENCEHOA"** shall mean the Initial Property legally described in *Exhibit "A"* attached hereto and incorporated herein by this reference, together with all Improvements constructed thereon from time to time, and all portions of the Annexable Property to the extent annexed pursuant to the provisions of *Article 13* below.

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

**"Resident"** shall mean each natural person legally occupying or residing in a Dwelling Unit.

**"Special Assessment"** shall mean any Assessment levied and assessed pursuant to *Section 8.9* hereof.

**"SPENCEHOA Rules"** shall mean those rules applicable to the Property and adopted and implemented by the Board from time to time.

**"Tract"** shall mean any portion of the Property which is subdivided as a separately divisible parcel of real property pursuant to a Plat, whether or not designated on the Plat as a "Tract," "Parcel" or other designation, but is not a Lot.

**"Visible From Neighboring Property"** shall mean, with respect to any given object, that such object is, or would be, visible to a Person six feet (6') tall, standing on the same plane as the object being viewed at a distance of one hundred feet (100') or less from the nearest boundary of the property being viewed.

## **ARTICLE 2**

### **PLAN OF DEVELOPMENT**

**2.1 General Declaration Creating the Property.** Declarant intends that the Property be developed, used and enjoyed in accordance with and pursuant to the Plat by subdividing the Property into Lots and Tracts and selling and conveying Lots to Owners for the purpose of the construction and sale of Dwelling Units thereon to third parties. All Lots and Tracts within the Property shall be held, conveyed, hypothecated, encumbered, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that any portions of the Property which are dedicated to the public or a governmental entity for public purposes shall not be subject to this Declaration or the Covenants herein contained while owned by the public or the governmental entity, although any restrictions imposed in this Declaration upon the Owners or the Residents concerning the use and maintenance of such portion or portions of the Property shall at all times apply to the Owners and the Residents. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property, and is established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and Residents and their successors in interest. By acceptance of a Deed or by acquiring any interest in any portion of the Property, each Person, for himself, his heirs, personal representatives, successors, transferees

and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the Covenants now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development, sale, and use of the Property and hereby evidences his interest that all Covenants contained in this Declaration shall run with the land and be binding upon all subsequent and future owners, grantees, purchasers, assignees, tenants and transferees thereof. Each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenant and agree that the Lots, Tracts, Memberships in the Association and the other rights appurtenant to such Lots and Tracts shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot or Tract even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Tract.

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

**2.3 Disclaimer of Representations.** Notwithstanding anything to the contrary herein, the Declarant makes no warranty or representation whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that the Property is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, the Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Tract in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a Deed to a Lot or Tract agrees that neither the Declarant n shall have any liability with respect thereto.

**ARTICLE 3**  
**EASEMENTS AND RIGHTS OF ENJOYMENT IN**  
**COMMON AREAS**

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

(a) The right of the Association to charge reasonable admission and other Special Use Fees for the use of the Common Areas or any facilities constructed thereon.

(b) The right of the Association to suspend the voting rights; right to use of the facilities and other Common Areas by any Member; and any other rights incidental to membership (i) for any period during which any Assessment against his Lot remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the SPENCEHOA Rules, and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period; provided, however, that a Member's rights may only be suspended under procedures sufficient to comply with Arizona law.

(c) The right of the Association to regulate the use of the Lots and Common Areas through the SPENCEHOA Rules and to prohibit or limit access to certain Common Areas, such as specified landscaped areas. The SPENCEHOA Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Lots and Common Areas for the safety and convenience of the users thereof, and otherwise shall serve to promote the best interests of the Owners and Residents.

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any entity for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless approved by the Owners of at least two-thirds (2/3) of each Class of Membership.

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



(f) The right of the Association to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common Areas and to abandon or otherwise transfer Common Areas so long as, in each case, either (i) the Board determines that the Members are not materially or adversely affected, or (ii) Members holding at least two-thirds (2/3) of each Class of Membership in the Association agreeing to such change in size, shape or location, exchange, abandonment or transfer.

### **3.2 Easements to Facilitate Development.**

3.2.1 Declarant shall have a blanket easement over the Common Areas in order to construct Improvements thereon and in connection with the construction of Dwelling Units on Lots within the Property.

3.2.2 Neither the Declarant n shall exercise any of the rights or easements reserved by or granted pursuant to this **Section 3.2** in such a manner as to unreasonably interfere with the construction, development or occupancy of any part of the Property.

3.2.3 The rights and easements reserved by or granted pursuant to this **Section 3.2** shall continue so long as the Declarant, as the case may be, owns any Lot or Tract. Declarant may make limited temporary assignments of its easement rights under this Declaration to any Person performing construction, installation or maintenance on any portion of the Property.

**3.3 Utility Easements.** A nonexclusive, perpetual blanket easement is hereby created over and through the Common Areas, and a limited, specific easement over and through those portions of the Property shown as public utility easement areas on any Plat is hereby created, for the purpose of:

- (a) Installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone and television service, whether public or private;
- (b) Ingress and egress to install, construct, operate, maintain, repair and replace such equipment; and
- (c) Exercising the rights under the easement.

Such easement is hereby granted to any Person providing such utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Declarant, where contemplated on any Plat, or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed aboveground during periods of construction if approved by the Declarant. The Person providing the service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter utilities as promptly and expeditiously as possible, and shall restore the surface of the land and the improvements situated thereon to their original condition as soon as possible.

**3.4 Easement for Maintenance of Association Maintained Areas.** The Association shall have an easement upon and over the Common Areas for the purpose of maintaining the landscaping and drainage facilities within such areas pursuant to the provisions of **Section 6.3(a)** of this Declaration. The easement provided in the foregoing shall terminate with respect to any Common Area on the date the Association's responsibilities with respect to maintaining the landscaping or drainage facilities within any such Common Area terminates.

**3.5 Easements for Encroachments.** If any Improvement constructed by or for Declarant on any Lot or Tract now or hereafter encroaches on any other portion of the Property by an amount of deviation permitted by customary construction tolerances, a perpetual easement is hereby granted to the extent of any such encroachment, and the owner of the encroaching Improvement shall also have an easement for the limited purpose of the maintenance and repair of the encroaching Improvement.

**3.6 Delegation of Use.** Any Member may, in accordance with this Declaration and the SPENCEHOA Rules and the limitations therein contained, delegate his right of enjoyment in the Common Areas and facilities to the members of his family, or his Residents.

**3.7 Drainage Retention Easements.** Certain portions of the Property, including certain specified Lots, may contain drainage retention basins thereon for the benefit of other portions of the Property. In connection therewith, each Owner who acquires a Lot subject to a drainage retention easement shall be responsible for maintaining such easement and the retention basin thereon in good

condition and repair, and without obstruction, such that the purposes for which such drainage retention basin has been established are appropriately served.

**3.8 Access Easement to Adjacent Parcel.** Each Owner who purchases a Lot within the Property acknowledges that the Declarant reserves the right to grant to the owner of that parcel of real property legally described in *Exhibit "C"* and incorporated herein by this reference (the "Adjacent Parcel") a perpetual easement for ingress and egress across, over and through all streets within the Property and any private entrance gates constructed and operated as part of the Common Areas. If such easement is granted, then, in that event, the owner of the Adjacent Parcel and any successor thereto will have the perpetual rights granted thereby, without cost or expense, and without the requirement to pay any Assessments of any kind or nature, including any Special Assessments, and shall be provided with all keys, combinations, pass cards and another materials necessary or required to have free and unobstructed ingress and egress through all entrance gates and streets within the Property. If such easement is granted, then such easement may not be terminated or ended without the prior written consent of the then owner of the Adjacent Parcel.

#### ARTICLE 4

##### **PERMITTED USES AND RESTRICTIONS**

**4.1 Residential Purposes.** All Lots and Dwelling Units within the Property shall be used for single-family residential purposes. No gainful occupation, profession, business, trade or other nonresidential use shall be conducted on or in any Dwelling Unit, provided that an Owner or any Resident may conduct limited business activities in a Dwelling Unit so long as (a) the existence or operation of the business activity is not apparent or detectible by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all applicable zoning requirements; (c) the business activity does not involve door-to-door solicitation of other Owners or Residents; (d) the business activity does not generate drive-up traffic or customer or client parking; and (e) the business activity is consistent with the residential character of the Property, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of other Owners or Residents, as may be determined in the sole discretion of the Board. No Lot will ever be used, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, commercial storage, vending, or other similar uses or purposes; provided, however, that the Declarant, and its respective agents, successors or assigns, may use the Property, including any Lots, for any of the foregoing uses as may be required, convenient, or incidental to the construction and sale of Dwelling Units thereon, including, without limitation, for the purposes

of a business office, management office, storage area, construction yard, signage, model sites and display and sales office during the construction and sales period. The Board shall have broad authority to enact rules and regulations to implement this *Article 4*, including exempting certain traditional home-based activities such as teaching music lessons.

**4.2 Animals.** No animal, bird, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, 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, poultry or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, poultry or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein and in this Declaration. So long as there is a Class B membership, the Declarant may adopt such rules and regulations relating to animals permitted and maintained on the Property. Thereafter, the Board may adopt such rules and regulations relating to animals permitted and maintained on the Property. No rule or regulation may have the effect of disqualifying any pet that has previously been allowed. All such pets must be grandfathered.

**4.3 Temporary Occupancy and Temporary Building.** No trailer, basement of any 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. Temporary buildings or structures may be used during the construction of a Dwelling Unit on any Lot, provided that they shall be removed immediately after the completion of construction.

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

**4.5 Antennas.** Subject to applicable law, no antenna, aerial, satellite dish or other device for the transmission or reception of television or radio

(including amateur or ham radio) signals of any kind (collectively referred to herein as "antennas") will be allowed outside any Dwelling Unit, except:

(a) Those antennas whose installation and use is protected under federal law or regulations (generally, certain antennas under one meter in diameter), provided that an application for such an antenna must be submitted to the Architectural Committee and such application will be approved only if:

(i) the antenna is designed to assure the minimal visual intrusion possible (*i.e.*, is located in a manner that minimizes visibility from any street); and

(ii) the antenna complies to the maximum extent feasible with the Guidelines within the confines of applicable federal regulations, (*i.e.*, without precluding reception of quality signal, or unreasonably increasing the cost of the antenna); or

(b) Dishes 18" in diameter or smaller in locations approved by the Architectural Committee for rear or side yard locations and appropriately screened.

Any transmission cable for a receiver to the house must be underground. The restrictions in this **Section 4.5** shall be subject to any limitations imposed by law. The Board is hereby vested with the broadest discretion to enact rules and regulations to implement this Article to conform to the law. The Board may enact rules and regulations that are more restrictive than this **Section 4.5**, if permissible by federal and state law.

**4.6 Mineral Exploration.** No Lot or Tract 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 any earth substance of any kind.

**4.7 Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot or Tract, except in covered containers of a type, size and style which are approved by the Board. The Board may adopt such reasonable rules and regulations as it deems necessary regarding trash containers and collection of trash, and except on a temporary basis during any period of construction of improvements on any Lot or Tract. 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 affect such collection. All rubbish, trash or garbage shall be promptly removed from all Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Tract. The Board may contract with a single source for trash removal and require all Owners to use the source.

**4.8 Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Tract unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and are not Visible From Neighboring Property.

**4.9 Party Walls.** Except as hereinafter provided, the rights and duties of Owners with respect to party walls between Lots, or party fences between Lots, shall be as follows:

(a) Each wall, including patio walls, which is constructed as a part of the original construction of the Dwelling Unit multi-family structure, or any part of which is placed on the dividing line between separate Dwelling Units, shall constitute a party wall. Each of the adjoining Owner shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(b) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of his Residents, agents, trees, irrigation systems, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall, or party fence without cost to the Owner of the adjoining Dwelling Unit. Any dispute over an Owner's liability for such damage shall be resolved as provided in ***Subsection (e)*** below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the Persons causing such damage.

(c) In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Residents, agents, trees, irrigation systems, guests or members of his family, it shall be the

obligation of all Owners whose Lots adjoin such party wall or party fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the party wall or party fence (with expenses related to walls or fences between Lots and Common Area be divided between the Lot Owner and the Association on such basis).

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

(e) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Architectural Committee for binding arbitration, the decision of which shall be final.

(f) Anything in the foregoing to the contrary notwithstanding, walls or fences constructed by the Declarant or the Association on Common Areas where the wall or fence does not border on a Lot, the Association shall be responsible for all maintenance thereof, subject to the provisions of **Section 10.2** of this Declaration, except that each Owner of a Lot shall be responsible for painting the portion of the party wall or party fence facing his Lot or the portion thereof which is not a portion of the Common Area.

(g) If a party wall must be penetrated to repair or replace utilities that benefit more than one Lot, the Owners of both Lots shall pay equally for the project. If a party wall must be penetrated to repair or replace utilities that benefit only one Lot, only that Lot Owner shall pay for the penetration, repair and replacement.

**4.10 Overhead Encroachments.** No tree, root, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, party wall, Common Area or other Lot from ground level to a height of eight feet (8') without the prior approval of the Architectural Committee.

**4.11 Window Coverings.** In no event shall the interior or exterior of any windows be covered with reflective material, such as foil, or with paper, bed sheets or other temporary coverings. The Board shall have the broadest authority to enact rules and regulations relating to window coverings.

**4.12 Garages and Driveways.** The interior of all garages situated upon any Lot shall be maintained by the respective Owners thereof in a neat and clean condition. Such garages shall be used for parking vehicles and storage only and shall not be used or converted for living or recreational activities. Garages may only be used for storage to the extent the maximum number of vehicles for which the garage was designed may also be parked in the garage. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or Persons. All driveways on Lots shall be of concrete construction. The Board may, upon reasonable notice, enter into a garage to ensure compliance with this section.

**4.13 Heating, Ventilating and Air Conditioning Units.** No heating, air conditioning or evaporative cooling units or equipment shall be placed, constructed or maintained upon the Property, including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots and Common Areas; or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property, which means of screening or concealment shall (in either case (a) or (b)) be subject to the regulations and approval of the Architectural Committee, provided, however, that where such unit or equipment is Visible From Neighboring Property solely through a "view fence", no screening or concealment shall be required.

**4.14 Solar Collection Panels or Devices.** Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Architectural Committee, such approval to be subject to the restrictions of applicable law, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either: (a) such solar collecting panels and



devices are placed, constructed and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Architectural Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a Person six feet (6') tall standing at ground level on adjacent properties. The restrictions in this *Section 4.14* shall be subject to any limitations imposed by law.

**4.15 Basketball Goals.** The Board may adopt such rules and regulations as it deems appropriate relating to the construction, use and placement of basketball goals or similar structures or devices (whether mounted on a pole, wall or roof).

**4.16 Vehicles.** Private, noncommercial, passenger automobiles or pickup trucks which, when including all attachments (including, without limitation, racks and shells), do not exceed one (1) ton in carrying load or cargo capacity, eighty-four inches (84") in height or width or two hundred twenty-two inches (222") in length, may be parked on the Property within a garage or in a private driveway appurtenant to a Dwelling Unit but, except as provided in the next sentence, may not be parked elsewhere on the Property or streets within the Property. The preceding sentence shall not preclude occasional overflow parking in a street right-of-way for guests or other guest parking area provided that no inconvenience is imposed on the Owners or Residents of other Lots. For the purposes of this Article, the term "occasional overflow parking" shall mean on a temporary and non-recurring basis and for a period not to exceed twenty-four (24) hours or such more restrictive period as may be: (a) imposed by Maricopa County, or (b) set by the Architectural Committee from time to time. No other vehicle (including, but not limited to, mobile homes, motor homes, boats, recreational vehicles, trailers, trucks, campers, permanent tents, or similar vehicles or equipment, commercial vehicles, or vehicles exceeding one (1) ton in carrying load or cargo capacity, eighty-four inches (84") in height or width, or two hundred twenty-two inches (222") in length or similar vehicles or equipment) shall be kept, placed or maintained upon the Property or any roadway adjacent thereto, except: (i) within a fully-enclosed garage connected to a Dwelling Unit and approved by the Architectural Committee; or (ii) in such areas and subject to such rules and regulations as the Board may designate and adopt in its sole discretion (and the Board in its sole discretion may prohibit such other vehicles and equipment completely). No vehicle (including, but not limited to, those enumerated in the preceding sentences) shall be constructed, reconstructed or repaired on the

Property or any roadway therein or adjacent thereto except within a fully enclosed garage. No inoperable vehicles of any kind shall be parked in any unenclosed parking areas (including, but not limited to, private driveways appurtenant to a Dwelling Unit). The Board shall have the authority to define the term "inoperable." The provisions of this *Section 4.16* shall not apply to vehicles of Declarant or its respective employees, agents, affiliates, contractors or subcontractors during the course of construction activities upon or about the Property.

**4.17 Prohibited Uses.** No use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance or unreasonable source of annoyance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Owner shall be permitted on any Lot. No use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, Maricopa County or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot. The Board shall have the sole authority to determine whether an activity violates this section. The Board's determination shall be final.

**4.18 Dust Control.** The areas on each Lot which are not improved with buildings ("Clear Areas") shall be landscaped as provided in *Section 4.17*. After a sale of any Lot by Declarant, until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition, free of weeds and debris and the Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover, or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain his Lot in a manner which minimizes the possibility of dust being transmitted into the air and over adjacent properties.

**4.19 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property for any unreasonable time, and no odors shall be permitted to arise therefrom, so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Residents. No loud, noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners and Residents. The

Board shall have the right to determine, in its sole discretion, whether the provisions of this **Section 4.19** have been violated. Any decision rendered by the Board shall be enforceable and be binding in the same manner as other restrictions in this Declaration.

**4.20 Drainage.** No Owner or Resident or other Person shall interfere with the drainage established for any portion of the Property by Declarant. No Owner or Resident or other Person shall obstruct, divert, alter or interfere in any way with the drainage of ground and surface water upon, across or over any portion of the Lots, Tracts, rights-of-way, Common Area(s) or other portions of the Property, including, but not limited to, construction or installation of any type of structure or vegetation. Each Owner shall, at its own expense, maintain the drainage ways, channels and retention basins on its Lot or Tract in proper condition free from obstruction. The Association shall have the right, after ten (10) days notice to an Owner, except in the case of emergency (in which case the Association shall have an immediate right of access), to repair or otherwise maintain the drainage way or channel on said Owner's Lot or Tract, which the Association, acting through the Architectural Committee, determines has not been maintained by the Owner in compliance with this provision. All costs and expenses, including, but not limited to, reasonable attorneys' fees and costs incurred by the Association shall be borne by the Owner, and shall be paid to the Association upon demand, plus interest at an annual rate of twelve percent (12%) from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment, subject to lien, and collected in like manner as Assessments levied pursuant to this Declaration. For the purpose of this clause, "drainage" means the drainage that exists at the time the overall grading of the Lots, Tracts, rights-of-way, and Common Area(s) were completed by the Declarant in accordance with plans approved by Maricopa County. Notwithstanding anything contained herein to the contrary, in the event the applicable Owner or Association fails to maintain any such drainage areas, then, in that event, Maricopa County shall have the right to enter upon and maintain any such drainage areas, whether or not the same are located on any Lot, Tract or within the Common Areas, and the costs thereof incurred by Maricopa County shall be charged to the Association and become part of the Assessments payable by the Owners pursuant to the terms hereof.

**4.21 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 and Residents, the Board may enact

rules restricting or regulating their presence on the Lot or Tract as part of the SPENCEHOA Rules.

**4.22 Leasing; Obligations of Tenants and Other Occupants.** All tenants shall be subject to the terms and conditions of this Declaration, the Articles, the Bylaws and the rules and regulations of the Association. Each Owner shall cause his, her or its Residents or other occupants to comply with this Declaration, the Articles, the Bylaws and the rules and regulations of the Association and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such Residents or other occupants, notwithstanding the fact that such Residents or other occupants are also fully liable for any violation of each and all of those documents. No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than twelve (12) consecutive months. Each Owner who rents a Lot or his Dwelling Unit thereon is required to advise the Board within fifteen (15) days of the effective date of the lease therefor. All leases must restrict occupancy to no more than five (5) unrelated Persons or to a single family of legally related Persons of any size. The Owner of a leased Lot or Dwelling Unit must furnish the Board with a tenant information form (provided by the Board) certifying that the tenant has agreed to be bound by this Declaration, the Articles, the Bylaws and the rules and regulations of the Association; and that the Owner accepts responsibility for the tenant's violation of such documents. The provisions of this **Section 4.22** shall not apply to the use of Lots or Dwelling Units owned by (or leased to) Declarant as a model home or for marketing purposes.

**4.23 Environmental Protections.** No Lot or Tract, nor any facilities on any Lot or Tract, shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this Section, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; the Arizona Environmental Quality Act, Laws 1986, Chap. 368; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

**4.24 Property Restrictions.** No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Resident or other Person against any Lot without the provisions thereof having been first approved in writing by the Board, and any such instrument which is Recorded without such approval being evidenced thereon shall be null and void; provided, however, that, without prior approval of the Board, the Declarant shall have the right to record additional covenants, conditions, restrictions or easements against any portion of the Property owned by Declarant either prior to or simultaneously with the conveyance of any such portion of the Property to an Owner. Notwithstanding the foregoing or anything else in this Declaration to the contrary, no such instrument Recorded by an Owner shall operate to modify or amend this Declaration but, in the event that such covenants, conditions and restrictions impose restrictions on the use or occupancy of the real property subject to such instrument which are more restrictive than the restrictions set forth in this Declaration, the more restrictive provisions shall prevail. No application for rezoning, variances or use permits pertaining to any Lot or Tract shall be filed with any governmental authority by any Person unless the application has first been approved by the Board or the Declarant, so long as Declarant owns any portion of the Property or the Annexable Property, and the proposed use otherwise complies with this Declaration. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale or leasing of Lots, Common Areas, or any other portion of the Property.

**4.25 Model Homes.** The provisions of this Declaration which prohibit nonresidential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by Declarant engaged in the construction and/or sale of Dwelling Units within the Property and parking incidental to the visiting of such model homes so long as the location of such model home are approved by the Architectural Committee, which approval shall not be unreasonably withheld, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. It shall be deemed reasonable for the Architectural Committee to withhold its approval of the location of any such model home to the extent that the location of such model home would materially and adversely interfere with the free-flow of pedestrian or vehicular traffic, create an unreasonable amount of dust and debris, or would otherwise constitute a public or private nuisance to other Residents within the Property. The Architectural Committee shall also permit other areas to be used for parking in connection with the showing of model homes provided such

parking areas are in compliance with the ordinances of any applicable governmental entity and any rules of the Board. Any Dwelling Units constructed as model homes shall cease to be used as model homes at any time the Declarant is not actively engaged in the construction and/or sale of single-family residences within the Property, and no Dwelling Units shall be used as a permanent main model home for the sale of Dwelling Units not located within the Property.

**4.26 Repair of Building.** No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by *Article 5* below, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

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

- (a) Signs required by legal proceedings.
- (b) No more than two (2) identification signs for individual residences, each with a face area of seventy-two square inches (72") or less.
- (c) "For Sale" and "For Lease" signs temporarily erected in connection with the marketing of any Lot.
- (d) Signs and notices erected or posted in connection with the provision of building security.
- (e) Promotional and advertising signs of Declarant on any Lot, approved from time to time in advance and in writing by the Architectural Committee as to number, size, color, design, message content, location and type.
- (f) Such other signs (including, but not limited to, construction job identification signs, builder identification signs and subdivision identification signs) which are in conformance with the applicable requirements of Maricopa County or other applicable governmental agencies and which have been approved in advance and in

writing by the Architectural Committee as to size, color, design, message content and location.

(g) Political signs are allowed only to the extent allowed by Arizona law.

**4.28 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 or Tract unless the same shall be contained in conduits or cables installed and maintained underground, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by the Declarant or as may be otherwise approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures.

**4.29 Right of Entry.** During reasonable hours and upon reasonable prior notice to the Owner or other Resident of a Lot or Tract, any member of the Architectural Committee or the Board, or any authorized representative thereof, shall have the right to enter upon and inspect any Lot or Tract, and the Improvements thereon, except for the interior portions of any completed Dwelling Units, for the purpose of ascertaining whether or not the provisions of this Declaration have been, or are being, complied with, and such Persons shall not be deemed guilty of trespass by reason of such entry.

**4.30 Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, Improvements or signs necessary or convenient to the development or sale of Lots and Tracts within the Property and, in connection therewith, Declarant shall have the right and authority to permit and authorize Declarant to construct and install temporary signage which is necessary or convenient to the development and sale of any Lots and Tracts within the Property.

**4.31 Crime and Drug Free Community.** The Association shall have the right and power to enact rules prohibiting criminal and drug activity on the Property, including the right to assess fines and evict tenants who engage in such activity. The Association shall have the right and power to require Owners to

sign reasonable contracts and forms that assure there is no criminal and drug related activity on the Property.

**4.32 Sonoran Desert Conditions.** The Association lies within the Sonoran Desert and contains many species of insects, reptiles and other animals. Scorpions, snakes, spiders, bobcats, hawks, javelina, gila monsters, pack rats and other animals indigenous to the area may be found throughout the Association in the natural areas and may enter upon the residential and recreational portion of the Association from time to time. Each Owner, Lessee and Resident, for itself and its families, licensees and invitees, assumes the risk that such animals may be present and may present a danger. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner, Resident, Lessee or its family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the existence of such indigenous animals within the Association.

## **ARTICLE 5**

### **ARCHITECTURAL CONTROL**

**5.1 Approval Required.** No Improvement which would be Visible From Neighboring Property, or which would cause any Person or thing to be visible from Neighboring Property, shall be constructed or installed on any Lot or Tract without the prior written approval of the Architectural Committee which shall have the authority to regulate the external design and appearance of the Lots and Tracts and all Improvements constructed thereon. No addition, alteration, repair, change or other work which in any way alters the exterior appearance of any part of a Lot or Tract, or any Improvements located thereon, which are or would be Visible From Neighboring Property shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Committee their 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. The request must be submitted via mail, return receipt requested. 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 reasonably request. The Architectural Committee shall have the power to charge an Owner a reasonable fee for the review process, which fee may include charges for an architect or engineer. If the



Architectural Committee fails to approve or disapprove an application for approval within forty-five (45) days after an application meeting all of the requirements of this Declaration and of the Guidelines, together with any fee required to be paid and any additional information, plans and specifications requested by the Architectural Committee have been submitted to the Architectural Committee, the application will be deemed to have been disapproved. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work 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.

**5.2 Review of Plans.** In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish-grade elevation. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this *Article 5* if the Architectural Committee determines, in its sole and absolute discretion, that:

(a) The proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration;

(b) The proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guideline;

(c) The proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the Property or with Improvements previously approved by the Architectural Committee but not yet constructed;

(d) The proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable in the sole and absolute discretion of the Architectural Committee;

(e) The proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect the appearance of the Property;

(f) The proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Property; or

(g) The proposed installation or alteration of landscaping desired to be installed does not comply with the restrictions and limitations thereon set forth in the Guidelines, including, without limitation, the provisions of the Guidelines which provide for the maintenance of natural desert vegetation and limit the area of turf within the Property.

The approval required by the Architectural Committee pursuant to this *Article 5* shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this *Article 5* shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

**5.3 Architectural Committee.** The Board of Directors shall serve as the Architectural Committee. The Architectural Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures ("Guidelines") may include, without limitation, provisions regarding (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography, (ii) placement of Dwelling Units and other buildings, (iii) landscape design, content and conformance with the character of the Property and permitted and prohibited plants, (iv) requirements concerning exterior color schemes, exterior finishes and materials, (v) signage, and (vi) perimeter and screen wall design and appearance. The decisions of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration but shall be subject to appeal to the Board as the final arbiter, and the decision of the Board in all cases shall be final and binding.

**5.4 Exclusions.** The provisions of this *Article 5* shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by or on behalf of Declarant, nor shall the Architectural Committee's approval be required for the construction of any Dwelling Units by the Declarant.

## **ARTICLE 6**

### **ORGANIZATION OF ASSOCIATION**

**6.1 Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**6.2 Board of Directors and Officers; Management.** The affairs of the Association shall be conducted by the Board elected in accordance with this Declaration and the Articles and Bylaws, and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time; provided, however, that the initial members of the Board shall be appointed by Declarant in Declarant's sole discretion. The initial Board shall be composed three (3) members. The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Notwithstanding anything contained in the foregoing or elsewhere in this Declaration to the contrary, the Declarant shall have the right to designate and to determine the compensation to be paid to the initial manager for the Association.

**6.3 Role of Association.** The Association is intended to be an "umbrella" organization whose primary responsibilities will be:

- (a) The maintenance of all Association Maintained Areas;
- (b) Appointment of individuals to serve on the Architectural Committee pursuant to the provisions of *Section 5.3* above; and

(c) The enforcement of the Covenants contained in this Declaration.

**6.4 The SPENCEHOA Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the SPENCEHOA Rules, which shall apply to, restrict and govern the use of any Common Areas, Lots or Tracts by any Member, invitee, guest or Resident; provided, however, that the SPENCEHOA Rules shall not be inconsistent with this Declaration, or the Articles or Bylaws of the Association. Upon adoption, the SPENCEHOA Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

**6.5 Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, no Declarant and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association.

## **ARTICLE 7**

### **MEMBERSHIPS AND VOTING**

**7.1 Owners of Lots.** Each Owner of a Lot shall automatically be a Member of the Association. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable, and joint ownership or ownership of undivided interests in any real property which establishes a Membership shall not cause there to be more Memberships than the number established for purposes of this *Section 7.1*. Each Member shall have one (1) Membership for each Lot owned by such Owner within the Property as shown on any Plat. Notwithstanding the fact that Owners of Tracts shall be subject to the Covenants contained in this Declaration which are specifically applicable to the Tracts, Owners of Tracts shall not be Members of the Association.

**7.2 Right to Vote; Declarant's Retention of Class B Voting Rights.** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such

Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one Person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void. The Association shall have two (2) classes of voting Members, as follows:

7.2.1 Class A. Class A Members shall be all Owners except Declarant. A Class A Member shall have one (1) vote for each Lot owned by such Member.

7.2.2 Class B. Class B Members shall be the Declarant. The Class B Members shall have three (3) votes for each Lot owned. The Class B Membership shall automatically cease and be converted to a Class A Membership upon the happening of the first of the following events:

(a) The date that is one hundred twenty (120) days after the date on which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Membership;

(b) The date that is twenty (20) years after the date this Declaration is Recorded; or

(c) The date on which Declarant relinquishes its Class B Membership by notifying the Board in writing.

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

7.4 **Transfer of Membership**. The rights and obligations of the Owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership of the Lot. A transferee of a Lot must notify the Board of the transfer in writing and remains liable for all

obligations or the transferor hereunder until the transferee so notifies the Board. A transfer of ownership to a Lot may be effectuated by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of the Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

**ARTICLE 8**  
**COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

**8.1 Creation of Assessment Right; Covenants to Pay.** In order to provide funds to enable the Association to meet its obligations, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Assessments shall be for Common Expenses and reserves and shall be allocated equally among all Lots. Each Owner, by acceptance of his, her or its deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Lot. Each Owner failing to pay an Assessment within fifteen (15) days of the date that the Assessment is due shall also pay a late charge as set by the Board from time to time. The initial late charge shall be the greater of Fifteen Dollars (\$15.00) per month or ten percent (10%) of the unpaid Assessment. Late charges shall be subject to any limitations imposed by the applicable Arizona law or other applicable law, as amended from time to time. The Owner shall also pay all costs and attorneys' fees incurred by the Association in seeking to collect such Assessments and other amounts. The Assessments with respect to a Lot, together with interest, costs and attorneys' fees as provided in this **Section 8.1**, shall also be the personal obligation of the Person who was the Owner of such Lot at the time such Assessments arose with respect to such Lot. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. Neither shall an Owner be relieved from the obligation to pay any of the Assessments on the contention the Owner did not receive a coupon book or invoice. Upon transfer by an Owner of fee title to such Owner's Lot and with written notice to the Board, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. Each Owner hereby directs the Association to apply payments to attorney fees, collection costs, fines, interest and any and all other charges in such amount and in such order as determined by the

Board. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws.

**8.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Association, for the improvement and maintenance of the Common Areas, and for all purposes set forth in the Articles, including but not limited to, management fees, insurance premiums unless otherwise provided for, expenses for maintenance repairs and replacements of Common Areas, and charges for water and other utilities for the Common Areas.

8.2.1 A portion of the assessments levied by the Association shall be used to establish and maintain a Reserve Fund. This Reserve Fund shall be established and maintained by the method designated by the terms of this Declaration in parts 8.2.2(a) and 8.2.2(b) below. Such fund shall be deposited in a special account with a safe and responsible depository and may be in the form of a cash deposit or invested in obligation of, or fully guaranteed as to principal by the United States of America. It is the Declarant's intent that the Association may only use the reserve funds for the purpose of effecting replacements and maintenance of capital and structural elements and mechanical equipment of the Common Areas. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of the Common Areas.

8.2.2 Procedure for Establishing a Reserve Fund.

a) The Board shall prepare an annual budget for the Association using the procedure set forth in Section 8.7 below. The annual budget shall include contributions to the Reserve Fund.

b) The Board shall select a funding method that is generally accepted in the industry. The Board shall contribute to the Reserve Fund in an industry standard funding method and as reflected in the Association's initial Reserve Study or any later supplements to that study. Should the total amount in the reserve fund fall 10 percent below the amount on a reserve

study prepared according to an industry accepted funding method adopted by the Board, the Association's annual assessments shall automatically increase 20 percent every year until the Reserve Fund equals or is greater than the amount on a reserve study prepared according to an industry accepted funding method. The 20 percent increase in the annual assessments occurs by operation of this Declaration and does not require an act or resolution of the Association's Board. When an automatic 20 percent increase occurs, the entire amount of the 20 percent increase shall be contributed to the reserve fund and may not be used for any other purpose. The automatic 20 percent increase may not be calculated as operating income in the annual budgeting process per section (b) above.

### **8.3 Lien for Assessments; Foreclosure.**

8.3.1 There is hereby created and established a lien in favor of the Association against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner thereof (together with any other amounts levied against such Lot or the Owner thereof pursuant to this Declaration or the Articles, the Bylaws or the rules and regulations of the Association). Such lien shall be prior and superior to all other liens affecting the Lot in question, except: (a) taxes, bonds, assessments and other levies which, by law, are superior thereto; and (b) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period the Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Areas. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although



the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

8.3.2 The Board may invoke any or all of the sanctions provided for herein or in this Declaration, or any other reasonable sanction, to compel payment of any Assessment or installment thereof, not paid when due (a "Delinquent Amount"). Such sanctions include, but are not limited to, the following:

(a) Interest and Late Fees. The Board may impose late fees for payment of any assessment or installment thereof that is not made within fifteen (15) days of the due date, and interest in such amounts as it determines are appropriate from time to time, subject to any limitations stated herein or imposed by law which such amounts shall be secured by the aforementioned liens;

(b) Suspension of Rights. The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights (except that any voting rights which are retained by Declarant as provided in *Section 7.2* above shall not be subject to suspension by the Board regardless of whether any Delinquent Amount remains unpaid with respect to the Lot or Lots subject to such voting rights) and rights to use and enjoy the Common Areas, in accordance with the procedures that conform to Arizona law;

(c) Collection of Delinquent Amount. The Board may institute an action at law for a money judgment or any other proceeding to recover the Delinquent Amount;

(d) Recording of Notice. The Board may record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs as provided in this Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of recording the notice, processing the delinquency and recording a notice of satisfaction of the lien; and

(e) Foreclosure of Lien. The Board may foreclose the Recorded lien against the Lot in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency).

8.3.3 It shall be the duty of every Owner to pay all Assessments with respect to the Owner's Lot in the manner provided herein. Such Assessments, together with interest and costs of collection as provided for herein and in this Declaration, shall, until paid, be a charge and continuing servitude and lien upon the Lot against which such Assessments are made, provided, however, that the lien for such Assessments shall be subordinate to only those matters identified in this Declaration. The Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided for in this Declaration or the Bylaws, or otherwise available at law or in equity for the collection of all unpaid Assessments, interest thereon, costs of collection thereof and reasonable collection agency fees and attorneys' fees.

8.3.4 The Association shall be entitled to maintain suit to recover a money judgment for unpaid Assessments without a foreclosure of the lien for such Assessments, and the same shall not constitute a waiver of the lien for such Assessments.

**8.4 Reduced Assessments.** The Declarant shall pay Annual Assessments with respect to Lots owned in an amount equal to twenty-five percent (25%) of the Annual Assessment payable by other Owners other than Declarant ("Reduced Assessments"). Declarant shall be required to pay to the Association Deficiency Assessments as provided below. When the Class B Membership ceases, Declarant shall no longer be required to pay any Deficiency Assessments.

**8.5 Deficiency Assessments.** During any period that Declarant is paying Reduced Assessments, the Declarant shall pay or contribute to the Association cash as may be necessary to make up any budget shortfalls of the Association resulting from the Reduced Assessments paid by the Declarant, which contribution shall be based upon the number of Lots owned by the Declarant as of the end of the period for which the deficiency has been calculated (hereinafter referred to as "Deficiency Assessments"). In no event shall Declarant be required to pay Deficiency Assessments for a period which, when added to the reduced Annual Assessment, if any (or pro rata portion thereof), paid for such period, exceeds the Annual Assessments or pro rata portion thereof that would be payable by an Owner other than Declarant. As an example of the effect of the foregoing, if the Annual Assessment per Lot was \$240.00, the Reduced Assessment paid by Declarant was consequently \$24.00, and there was a shortfall in the first quarter of such year, the maximum Deficiency Assessment payable by Declarant for the first

quarter will be \$54.00, calculated by taking the pro rata full Annual Assessment (\$60.00) and subtracting the pro rata reduced Annual Assessment (\$6.00).

**8.6 Computation of Annual Assessments; Annual Budget.** The Board shall adopt a budget for each fiscal year of the Association, commencing with the year in which any Common Areas are conveyed to the Association, which budget shall serve as the basis for determining the Annual Assessments for the applicable fiscal year (subject to the limitations of **Section 8.8** hereof). The annual budget shall include contributions to the Reserve Fund described in Section 8.2 above. Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall deliver or mail to each Owner a copy of the budget and a statement of the amount of Annual Assessments to be levied against such Owner's 's Lot(s) for that year. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided below, neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Owners.

**8.7 Due Dates.** Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due). If the Board collects assessments on any basis other than annually, there shall be a late fee on each installment not paid within fifteen (15) days of its due date.

**8.8 Maximum Annual Assessment.** The Assessments provided for under **Section 8.6** shall not at any time exceed the "Maximum Annual Assessment," as determined in accordance with this **Section 8.8**. For the fiscal year ending December 31 of the year in which, the Common Areas are conveyed to the Association, the Maximum Annual Assessment for each Lot shall be determined by the Board. Thereafter, except as provided below, unless a greater increase is approved by a vote of fifty percent (50%) of a quorum of the Members represented in Person or by absentee ballot, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year automatically increased by ten percent (10%) of

the previous year's Annual Assessment. Further, notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by this Declaration to be maintained by the Association; and (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is greater than otherwise permitted under the third sentence of this *Section 8.8*. Increases in Annual Assessments shall be subject to any limitations imposed by the applicable Arizona law.

**8.9 Special Assessments.** The Association may, in addition to the Annual Assessments under *Section 8.6*, levy a Special Assessment but only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement owned by the Association or for defraying other extraordinary expenses, provided, however, that such Special Assessment must be approved by a majority of the votes of a quorum of the Members voting in Person, by absentee ballot or some other form of delivery. Special Assessments shall be assessed uniformly among the Owners.

**8.10 Transfer Fee.** Each Person who purchases a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee of at least \$200.00 or in such greater amount as is established from time to time by the Board.

**8.11 Initial Operating Expense Fund.** To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person who purchases a Lot shall pay \$200.00 to the Association immediately upon becoming the Owner of a Lot. Funds paid to the Association pursuant to this *Section 8.11* may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration. Payments made pursuant to this *Section 8.11* shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the Annual Assessment or any other Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this *Section 8.11* shall not be used in calculating the Maximum Annual Assessment.

**8.12 Capital Reserve Fund.** To assist the Association in establishing adequate funds to meet its Capital Expenses, each Owner who purchases a Lot shall pay two-tenths of a percent (.2%) of the purchase price to the Association immediately upon becoming the Owner of a Lot (the "Capital Reserve Fee"). Such payment shall be required upon each transfer of title to each Lot. Funds paid to the Association pursuant to this **Section 8.12** are to be used by the Association for payment of establishing reserves; provided that, so long as there is a Class B membership, such funds may only be used to establish a replacement and repair reserve account or to apply towards repair and reconstruction of Capital Improvements within the Common Areas. Payments made pursuant to this **Section 8.12** shall be nonrefundable and shall not be considered as an advance payment of any other Assessments levied by the Association pursuant to this Declaration. When there is no longer a Class B membership, the Board shall have the right, by an affirmative vote of the majority of the members of the Board, and based upon the Board's analysis of replacement and repair reserves, using an industry accepted funding method, to permanently or temporarily decrease or cease to assess the Capital Reserve Fee, and having ceased to assess the Capital Reserve Fee, the Board shall have the right to reinstate the assessment of such fee at any time thereafter, it being the intent that the Board shall have the right to begin or cease assessment of the Capital Reserve Fee as the Board deems appropriate from time to time. Declarant shall not be liable for any past or future Capital Reserve Fund contributions. By agreeing to be bound by this Declaration, each Owner who purchases a Lot agrees and acknowledges that this method of establishing and maintaining a Capital Reserve Fund is adequate to meet anticipated costs to maintain and replace Capital Improvements.

## **ARTICLE 9**

### **USE OF FUNDS; BORROWING POWER**

**9.1 Purposes for which Association's Funds May Be Used.** The Association shall apply all funds and property collected and received by it (including the Annual Assessments, Reduced Assessments, Special Assessments and Deficiency 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 Property and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Property, which may be necessary, desirable or beneficial to the general common interests of the Property, the Members and the

Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance of landscaping on Common Areas and public right-of-way and drainage areas within or serving the Property, maintaining the Common Areas as provided in this Declaration, obtaining of liability insurance, supplying of utilities and other public services, providing for communication and transportation within and dissemination of information concerning the Property, obtaining legal and accounting services for the Association, indemnification of officers and directors of the Association and generally protecting the health and safety of the Members and the Residents. The Association may also expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

**9.2 Borrowing Power.** The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate; provided, however, that no portion of the Common Areas shall be mortgaged or otherwise encumbered without the approval of at least two-thirds (2/3) of a quorum of the Members other than Declarant so long as Declarant is a Class B Member.

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

**9.4 Insurance.** The Association may maintain insurance against liability incurred as a result of death or injury to Persons or damage to property on the Association Maintained Areas, including the Common Areas, directors and officers liability insurance, and/or such other insurance as the Board determines appropriate with the amount and type of coverage to be determined by the Board.

**ARTICLE 10**  
**CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS**

It is intended that the Common Areas, each Lot, and all Improvements constructed on the Property will be constructed in compliance with all applicable building codes and ordinances and that all Improvements will be of quality that is consistent with good construction and development practices in the area where the Property is located for housing similar to that constructed within the Property. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding Alleged Defects will be resolved amicably, without the necessity of protracted and costly litigation. Accordingly, the Declarant, the Association, the Board, and all Owners shall be bound by the following claim resolution procedures.

**10.1 Right to Cure Alleged Defect.** If a Claimant claims, contends, or alleges an Alleged Defect, the Declarant shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

**10.1.1 Notice of Alleged Defect.** Within twenty (20) days of the closing on a Lot, the Claimant shall notify the Declarant of any Alleged Defect pursuant to the Declarant's standard punch-list form. If a Claimant thereafter discovers or becomes aware of an Alleged Defect not noticeable to the average Person, Claimant shall give notice of the Alleged Defect to the Declarant constructing the Improvements with respect to which the Alleged Defect relates, such Notice to be provided within thirty (30) days after discovery thereof or within one (1) year after the Lot is sold to the original Owner. With respect to an Alleged Defect with the Common Areas or any Improvements constructed by Declarant, notice must be provided within one (1) year after completion of construction of the Common Areas and/or Improvements, as applicable, and the conveyance of the Common Areas to the Association.

**10.1.2 Right to Enter, Inspect, Repair and/or Replace.** Within a reasonable time, but no longer than sixty (60) days after the receipt by Declarant and/ of a notice of an Alleged Defect, or the independent discovery of any Alleged Defect by the Declarant, the Declarant shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter onto or into the Common Area, any Lot, and/or any Improvements (including the Dwelling Unit of such Claimant) for the purposes of inspecting and/or conducting

testing and, if deemed necessary by Declarant, at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. A Claimant shall not pursue any legal remedies until the Claimant has permitted the Declarant to exercise its rights under this *Section 10.1.2*.

**10.2 No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in this Article shall be construed to impose any obligation on Declarant to inspect, test, repair, or replace any item or Alleged Defect for which such Declarant is not otherwise obligated under applicable law or any warranty provided by Declarant in connection with the sale of Lots, Dwelling Units and/or other Improvements constructed on the Property. The right reserved to Declarant to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to Declarant except by a written and Recorded document executed by Declarant.

**10.3 Legal Actions.** All legal actions initiated by a Claimant shall be brought in accordance with and subject to *Section 10.4* of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, mediation, or arbitration against Declarant alleging (a) damages for Alleged Defect Costs, (b) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (c) for any consequential damages resulting from such Alleged Defect; any judgment or award in connection therewith shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's Capital Reserve Fund. If the Association is a Claimant, the Association must provide a written notice mailed to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against Declarant (s) which notice shall include at a minimum (i) a description of the Alleged Defect; (ii) a description of the attempts of the Declarant (s) to correct such Alleged Defect; (iii) a certification from an architect or engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (iv) the estimated cost to cure the Alleged Defect; (v) the name and professional background of the attorney retained by the Association to pursue the claim against the Declarant and a description of the



relationship between such attorney and member(s) of the Board or the Association's management company (if any); (vi) a description of the fee arrangement between such attorney and the Association; (vii) the estimated attorneys' fees, and expert fees and costs necessary to pursue the claim against the Declarant (s) in question, and the source of the funds which will be used to pay such fees and expenses; (viii) the estimated time necessary to conclude the action against the Declarant (s); and (ix) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members. Notwithstanding any other provision in this Declaration, the Association shall have the power and authority to make claims related to Alleged Defects in the Common Areas. In no event shall the Association have the power or authority to assert any claim related to any Alleged Defect which Alleged Defect relates solely to a Lot or Lots owned by the Members.

**10.4 Alternative Dispute Resolution.** Any dispute or claim between or among (a) Declarant (or its respective brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner(s) who is not the Declarant or the Association, on the other hand; or (b) any Owner and another Owner arising out of this Declaration; or (c) the Association and any Owner regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of any Improvements; (iii) or an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment or enforcement of this Declaration against an Owner (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then binding arbitration as set forth in this **Section 10.4**.

**10.4.1 Negotiation.** Each party to a Dispute shall make every reasonable effort to meet in Person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear his/her/its own attorneys' fees and costs in connection with such negotiation.

**10.4.2 Mediation.** If the parties cannot resolve their Dispute pursuant to the procedures described in **Subsection 10.4.1** above within such time period as may be agreed upon by such parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") shall have

thirty (30) days after the Termination of Negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by Community Association Dispute Resolution Center or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree collectively ("CADRC"). No Person shall serve as a mediator in any Dispute in which such Person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty (30) days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the forgoing proceedings.

**10.4.2.1 Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in Maricopa County, Arizona or such other place as is mutually acceptable by the parties to the Dispute.

**10.4.2.2 Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in *Subsection 10.4.2.5* below. The mediator does not have the authority to impose a settlement on any party to the Dispute.

**10.4.2.3 Exclusion Agreement.** Any evidence of admissions offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

**10.4.2.4 Parties Permitted at Sessions.** Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

**10.4.2.5 Expenses of Mediation.** All expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear his/hers/its own expert fees, attorneys' fees and costs in connection with such mediation.

**10.4.3 Final and Binding Arbitration.** If the parties cannot resolve their Dispute pursuant to the procedures described in *Subsection 10.4.2* above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to arbitration in accordance with the procedures of CADRC, as modified or as otherwise provided in the *Subsection 10.4.3*. If the Disputing Party does not submit the dispute to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to Persons not a party to the forgoing proceedings.

The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. Neither the Declarant shall be required to participate in the arbitration proceeding if all parties against whom the Declarant would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this

**Subsection 10.4.3**, the arbitrator shall have the authority to try all issues, whether of fact or law.

**10.4.3.1 Place.** The arbitration proceedings shall be exclusively heard in \* County, State of Arizona.

**10.4.3.2 Arbitration.** A single arbitrator shall be selected in accordance with the procedures of CADRC from panels maintained by the Association with experience in relevant matters, which are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Property. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

**10.5 Enforcement of Resolution.** If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with **Subsection 10.4.1** or **Subsection 10.4.2** above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if the parties accept an award of arbitration in accordance with **Subsection 10.4.3** and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate proceedings to enforce the terms of such negotiation, mediation, or the award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the noncomplying party (or if more than one noncomplying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation or mediation or the award including, without limitation, attorneys fees and court costs.

**10.6 Conflicts.** Notwithstanding anything to the contrary in this Declaration, if there is a conflict between the Article and any other provision of the Community Documents, this Article shall control.

**10.7 Arizona Statute Compliance.** In the event a court of competent jurisdiction invalidates all or part of this **Article 10** regarding the resolution of Disputes, and litigation becomes unfortunately necessary, the Declarant, the Association, the Board, and all Owners shall be bound by the applicable Arizona Construction Defect Statute presently codified at A.R.S. § 33-1901.

**10.8 Order of Liability.** In the event any Claimant brings any claim related to any construction or engineering defect as to a specific Lot or Dwelling Unit, the Builder or engineer shall indemnify and hold Declarant harmless as to that claim and shall reimburse Declarant for Declarant's total and complete cost of defense.

**10.9 Exclusions.** The Declarant shall be liable for damages or any defects caused by (a) normal wear and tear, (b) use of property other than normal usage by Owners, Association Members or third parties, (c) alterations by the Owners, or (d) reliance by Declarant on engineering or other reports.

**10.10 Rights Against Declarant.** Nothing in this Declaration shall limit the right of the Association or the Owner of a Lot to pursue appropriate remedies against Declarant through the Arizona Registrar of Contractors.

## **ARTICLE 11 MAINTENANCE**

**11.1 Common Areas and Public Rights-of-Way.** The Association, or its duly delegated representative, shall, in the exercise of its discretion, maintain and otherwise manage, all Common Areas, including, but not limited to, internal streets, landscaping, walkways, parks, paths, greenbelts, parking areas, entrance gates, drainage retention areas and other facilities. The Association may also maintain any landscaping and other improvements not on Lots which are within the exterior boundaries of the Property within areas shown on a Plat for any Tract within the Property and which are intended for the general benefit of the Owners and Residents of the Property, except the Association shall not maintain areas which (a) Maricopa County or other governmental entity is maintaining, or (b) are required to be maintained by the Owners of a Lot. The Association shall, in the discretion of the Board:

(i) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon Common Areas;

(ii) Replace injured and diseased trees and other vegetation in any Common Area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(iii) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(iv) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

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

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

#### **11.2 Maintenance of the Townhouse Dwelling Unit.**

- (i) **Exterior Maintenance by the Association:** In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: repair exterior building surfaces and repair and maintain the roof. Such exterior maintenance shall not include glass surfaces or painting of the exterior of the Dwelling Units. The Board shall have the responsibility to determine how such repairs shall be made. Each home owner shall be responsible for the maintenance, repair, or replacement of gutters, and down spouts, entrance sidewalks and driveways of his or her Dwelling Unit. In the

event that the need for maintenance or repair is caused through the willful or negligent act of the owner, his/her family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

- (ii) **Maintenance by the Owner:** Maintenance, upkeep, and repairs of the Dwelling Units, including the interiors, and any patios or balconies thereon, including and landscaping, shall be the sole responsibility of the individual Owners thereof and not in any manner the responsibility of the Board of Directors. Owners are responsible for painting the exteriors of the Dwelling Units. Exterior colors of all Townhouse Dwelling Units shall be controlled by the Board of Directors and any change of colors at any time shall first have the approval of the Board of Directors.

**11.3 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas.** In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the act of any Member, his family, guests, tenants or invitees, the cost of such maintenance or repairs shall be due within thirty (30) days of notice and shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject, and shall be secured by the Assessment Lien, provided, that prior to submitting a bill for such costs, the Board shall cause a notice to be sent to Owner specifying the maintenance or repairs and Owner shall have the right to object to his responsibility. Following the Board's consideration of such objection, the Board may absolve Owner or demand that Owner pay the bill within the thirty (30) day period provided above. The decision of the Board shall be final and binding. Any charges or fees to be paid by the Owner of a Lot 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.

**11.4 Improper Maintenance and Use of Lots and Tracts.** In the event any portion of any Lot or Tract 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, Tracts or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Tract is being used in a manner which violates this Declaration, or in the event the Owner

of any Lot or Tract is failing to perform any of its obligations under this Declaration or the SPENCEHOA Rules, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken (either by undertaking such corrective actions or bringing suit to compel the offending Owner to undertake such corrective action) and the cost thereof, together with any attorney's fees expended by the Association in connection therewith, shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot or Tract is subject, if any, and shall be secured by the Assessment Lien.

**11.5 Conveyance of Common Areas.** Upon completion of construction of any Common Areas, the Declarant, or the Owner thereof if other than the Declarant, shall execute and deliver to the Association a quit-claim deed of conveyance for such Common Areas. Upon Recordation of such Deed, the Association shall be deemed to have assumed all responsibility for the ongoing maintenance, repair and restoration of such Common Areas and in accordance with the Community Documents. After conveyance of any Common Area to the Association and until the Class B Membership expires, the Association shall not further convey the Common Area without the consent of at least two-thirds (2/3) of all the Memberships of the Association (and not two-thirds (2/3) of a quorum.



**ARTICLE 12**  
**RIGHTS AND POWERS OF ASSOCIATION**

**12.1 Association's Rights and Powers as Set Forth in Articles and Bylaws.** In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a Person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

**12.2 Rights of Enforcement of Provisions of This and Other Instruments.** The Declarant, for so long as it owns any real property within the Plat and/or controls voting rights of Class B Members as set forth in *Section 7.2* above, and the Association, as the agent and representative of the Members, shall each have the right to enforce the provisions of this Declaration. However, if the Declarant or the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association, by any appropriate action, whether in law or in equity, but not at the expense of the Association, provided that if the Board, in its business judgment, deems it inappropriate under the circumstances, such enforcement shall not be required, and no Member may bring an action against the Board or Declarant for failure to enforce the Community Documents without joining as claimants at least twenty percent (20%) of the Members, and without complying with the provisions contained in *Article 10*.

**12.3 Contracts with Others for Performance of Association's Duties.** Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one (1) or more directors or officers of the Association, or members of any committee, is employed by, or otherwise connected with, Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract

or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant or its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

**12.4 No Duty of Protection or Security.** No provision of this Declaration or the other Project Documents shall be construed or interpreted to create a duty of the Declarant, Related Parties, a Builder, the Association, the Board, any officer of the Association or any committee or member of a committee appointed by the Board to protect or further the health, safety, welfare or property of any Owner, Occupant or other person entering upon or making use of any portion of the Property, regardless of whether any monies of the Association are expended for such a purpose.

### **ARTICLE 13**

#### **ANNEXATION AND DEANNEXATION**

**1312 Annexation of Other Real Property.** Real property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association with the approval of a majority of a quorum of the Members of the Association. In the event that any additional real property is annexed to the Property, such annexation shall be effected by the Recordation of a Supplementary Declaration covering the real property sought to be annexed and executed and Recorded by the Board and by the fee title holders of the real property sought to be annexed.

**13.3 Limitations on and Effect of Annexation.** No Supplementary Declaration shall be executed and Recorded pursuant to this *Article 13* more than twenty (20) years subsequent to the Recording of this Declaration. Such execution and Recording of a Supplementary Declaration shall constitute and effectuate the annexation of other real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter the other real property so annexed shall be part of the Property and all of the Owners of Lots in the other real property so annexed shall automatically be Members of the Association.

**13.4 Deannexation Without Approval.** A portion or portions of the Property may be deannexed from the Property and be withdrawn from this Declaration and the jurisdiction of the Association, provided that a Certificate of Deannexation covering the portion of the Property sought to be deannexed shall be executed and Recorded by Declarant (so long as Declarant owns or controls any Class B Memberships) or its successors and assigns, and by the Owner(s) of all of the real property to be deannexed. No Certificate of Deannexation shall be so executed and Recorded pursuant to this Section more than twenty (20) years subsequent to the Recording of this Declaration.

**13.5 Supplementary Declarations and Certificates of Deannexation.** The annexations and deannexations authorized under the foregoing Sections shall be made by Recording in the office of the County Recorder of Maricopa County, Arizona, a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, which shall extend the plan of this Declaration to such property or a Certificate of Deannexation which shall remove the portion of the Property covered thereby from the plan of this Declaration. The Supplementary Declarations contemplated above may contain such complementary additions and modifications of the Covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, revoke, modify or add to the Covenants established by this Declaration within the existing Property.

#### **ARTICLE 14**

#### **TERM; AMENDMENTS; TERMINATION**

**14.1 Term; Method of Termination.** This Declaration shall be effective upon the date of its Recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension, and by the Declarant to the extent Declarant and/ holds a Class B Membership. This Declaration may be terminated at any time if ninety percent (90%) of the votes cast by the Members shall be cast

in favor of termination at a meeting held for such purpose and the Declarant, to the extent it continues to own a Lot in the Property, have voted in favor of termination. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of First Mortgages to which the Assessment Lien is subordinate pursuant to Article 8 above, on seventy-five percent (75%) of the Lots upon which there are such First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

**14.2 Amendments.** Except for Article Ten above, this Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged by the Secretary of the Association. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in **Section 14.3** of this Article, shall certify that, at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws or in a vote by mail, the Owners casting at least two-thirds (2/3) of the votes then entitled to be cast (and not two-thirds (2/3) of a quorum) voted affirmatively for the adoption of the Amendment and by one-hundred percent (100%) of Declarant's votes, to the extent Declarant continues to own or control any Class B Memberships. Notwithstanding the above, Article Ten above may only be amended by an instrument executed and acknowledged by all the Members, and the Declarant, and which amendment is recorded in the Office of the \* County Recorder.

**14.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions.** Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the FHA, VA, FNMA, FHLMC, Maricopa County or any other governmental or quasi-governmental entity in connection with any government-sponsored loan programs, and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of

any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recording of a Certificate of Amendment duly signed by or on behalf of Declarant, with its signature acknowledged, specifying the federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of the Property and all Persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt, as an amendment hereto, other and different control provisions. Except as provided in this *Section 14.3*, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of *Section 14.2* of this Article.

**ARTICLE 15**  
**BOARD OF DIRECTORS POWER TO ENFORCE**

**15.1 Board of Directors Power to Enforce.** The Board of Directors shall have the authority to enforce all uses and restrictions contained in this Declaration and all decisions of the Architectural Committee. The Board shall act as the final arbiter of any dispute related to the uses and restrictions contained in *Article 4* and all rules. The Board shall act as the final interpreter of any of the provisions in this Declaration and all rules or decisions of the Architectural Committee. Nothing contained in this Article 15 shall limit the Association's right to file legal actions for the collection of assessments, or to enjoin violations. All other disputes related to the Community Documents shall be resolved in accordance with Article 10 above.

**ARTICLE 16**  
**MISCELLANEOUS**

**16.1 Interpretation of the Covenants.** Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and

binding as to all Persons and property benefited or bound by the Covenants and provisions hereof.

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

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

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

**16.5 References to the Covenants in Deeds.** Deeds to, and instruments affecting, any Lot or Tract or any part of the Property may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee/Owner or other Person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

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

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

**16.8 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 or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County, by email or posted on the Association's website. 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.

**16.9 FHA/VA Approval.** If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as Declarant has the right to exercise Declarant's rights hereunder, the following actions will require the prior approval of the FHA and VA, as applicable, unless the need for such approval has been waived by the FHA and VA: (a) Dedications of Common Areas (except where such dedication is required as of the date hereof to the County of Maricopa or other applicable government subdivision); (b) amendment of this Declaration; and (c) the Annexation of additional real property to the Property other than the Annexable Property.

**16.10 Waiver.** The waiver of or failure to enforce any breach or violation of this Declaration will not be deemed a waiver or abandonment of any provision of the Declaration or a waiver of the right to enforce any subsequent breach or violation of the Declaration. The foregoing shall apply regardless of whether any Person affected by the Declaration (or having the right to enforce the Declaration) has or had knowledge of the breach or violation.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

R&K Tempe LLC  
an Arizona limited liability company

By: Raman Gupta  
Its Manager

STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of AUGUST, 2020, by RAMAN GUPTA, the Declarant of SPENCEHOA.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL: Harman Vadia  
Notary Public  
My Commission Expires:

10/23/2022





EXHIBIT "A"

A Replat of a portion of Tract A, Halsingborg, Book 41, Page 35, MCR. A Subdivision located in the Southwest Quarter, Section 23, Township 1 North, Range 4 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona.