

Page:3 of 14

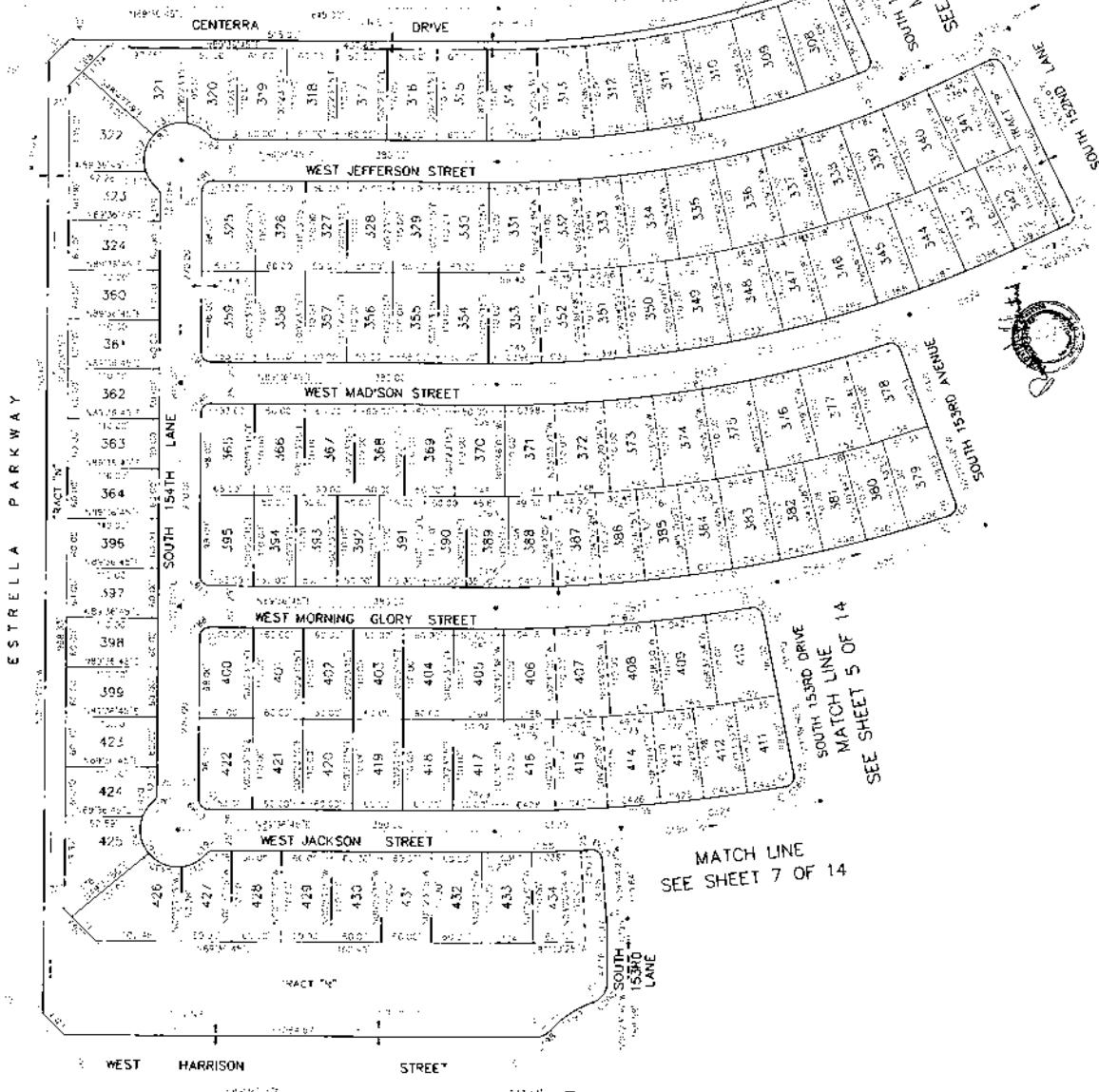
553 37  
2001-0064653

A PLANNED RESIDENTIAL, COMMERCIAL, & MIXED-USE DEVELOPMENT BEING STUDIED IN SECTION 8, TOWNSHIP 1 NORTH, RANGE 1 WEST, OF THE GLA AND SALT RIVER BASE & MERIDIAN, MARICOPA COUNTY, ARIZONA

“CENTERRA”  
FINAL PLOT

INNATE PREDICTION

MATCH LINE SEE SHEET 2 OF 14

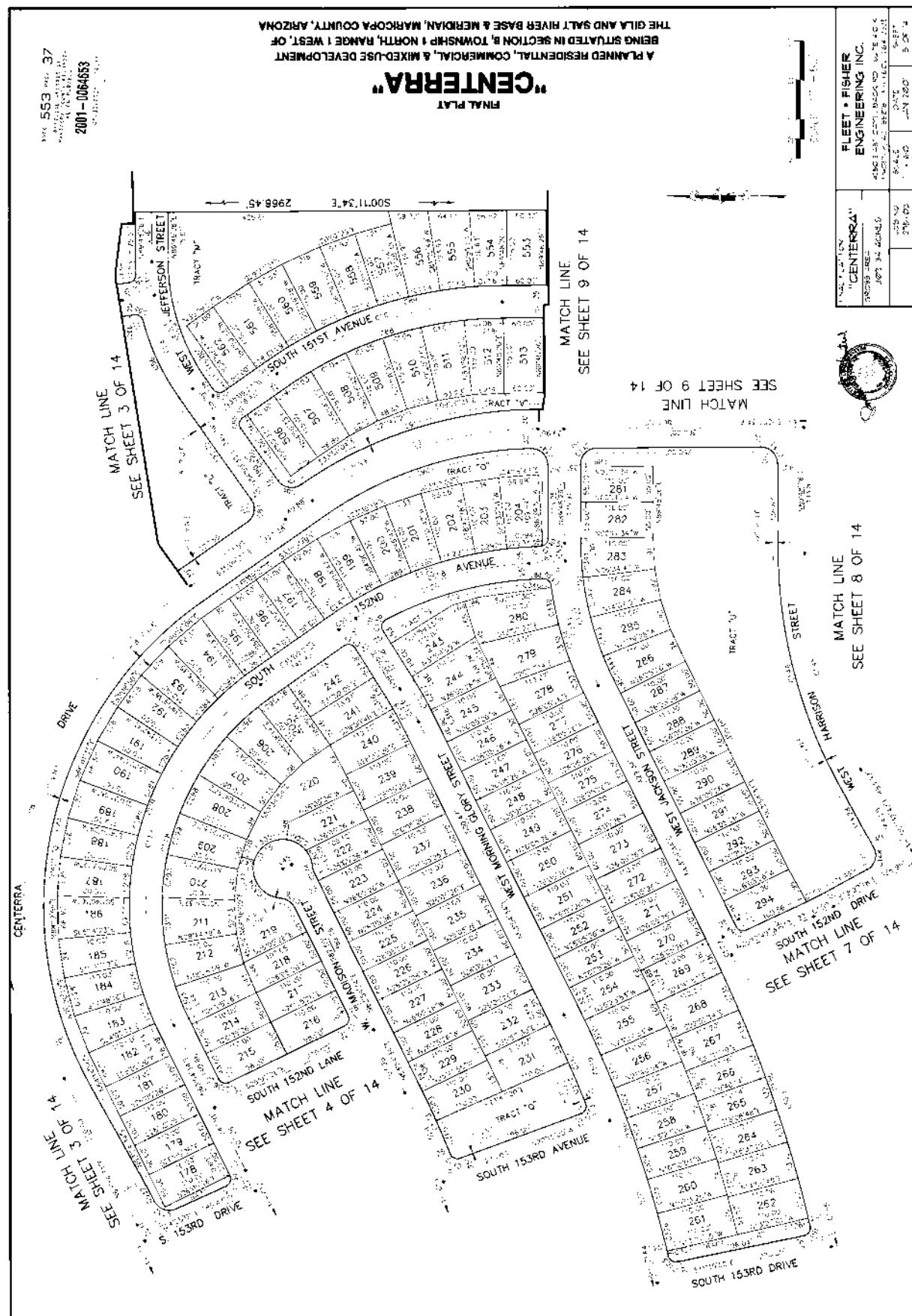


MATCH LINE SEE SHEET 6 OF 14

MATCH LINE  
SEE SHEET 7 OF 14

**FLEET • FISHER  
ENGINEERING INC.**  
"CENTERA"  
GEORGE F. FISHER  
1000 3rd Avenue  
Seattle, Washington 98101  
(206) 467-1212

553.37

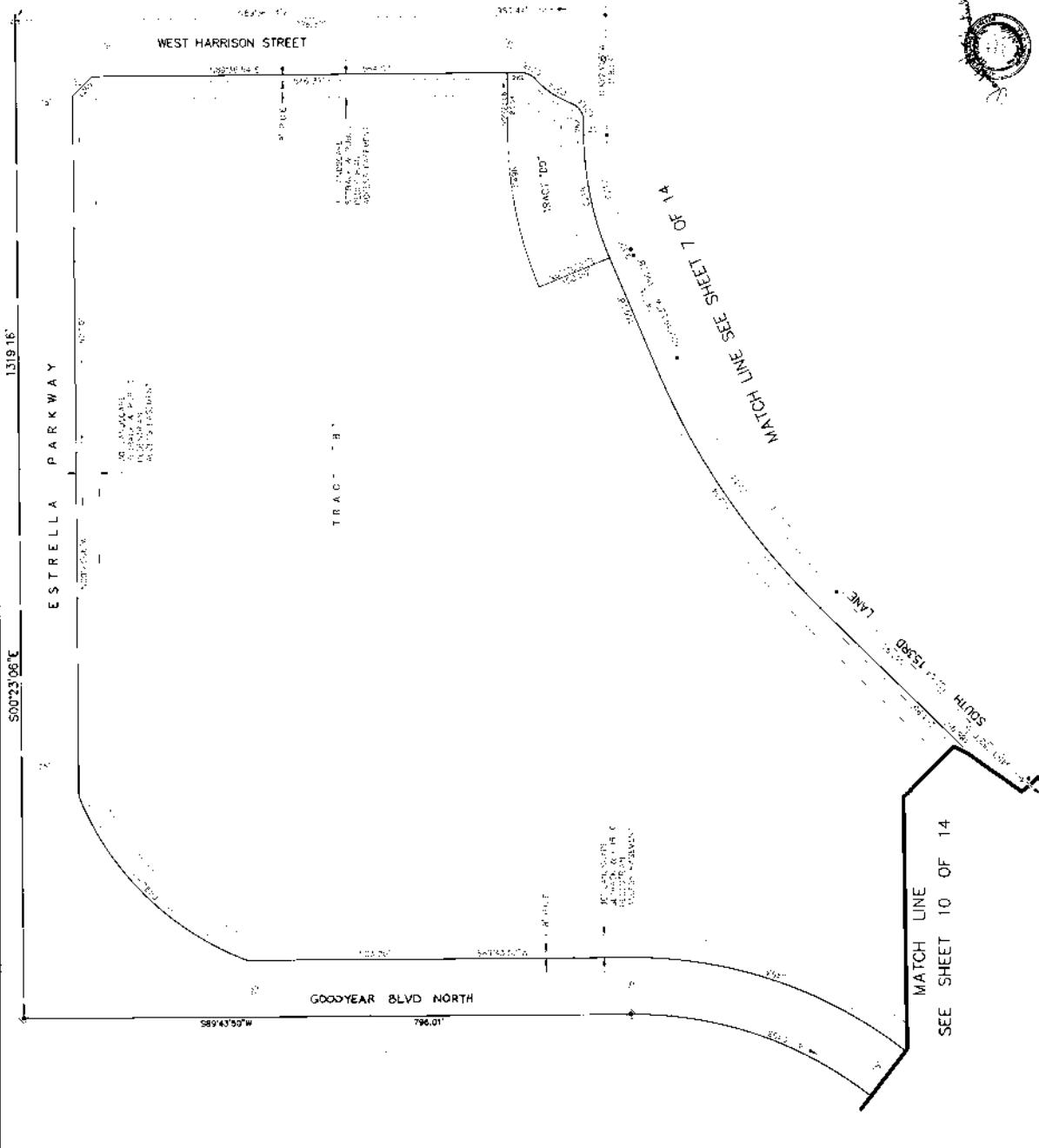


A PLANNED RESIDENTIAL, COMMERCIAL, & MIXED-USE DEVELOPMENT BEING SITUATED IN SECTION 6, TOWNSHIP 1 NORTH, RANGE 1 WEST, OF THE GILA AND SALT RIVER BASE LINE, MARIOPA COUNTY, ARIZONA

“CENTERRA”  
FINAL PLAT

MATCH LINE SEE SHEET 4 OF 14

WEST HARRISON STREET



MATCH LINE  
SEE SHEET 10 OF 14

<b>"CENTERA"</b>	<b>FLEET • FISHER ENGINEERING INC.</b>	
SANTA FE RIVER	4700 E. 15TH STREET, BAKERSFIELD, CALIF. PHONE 2-1211	4700 E. 15TH STREET, BAKERSFIELD, CALIF. PHONE 2-1211
1000' x 300' x 100'	1000' x 300' x 100'	1000' x 300' x 100'

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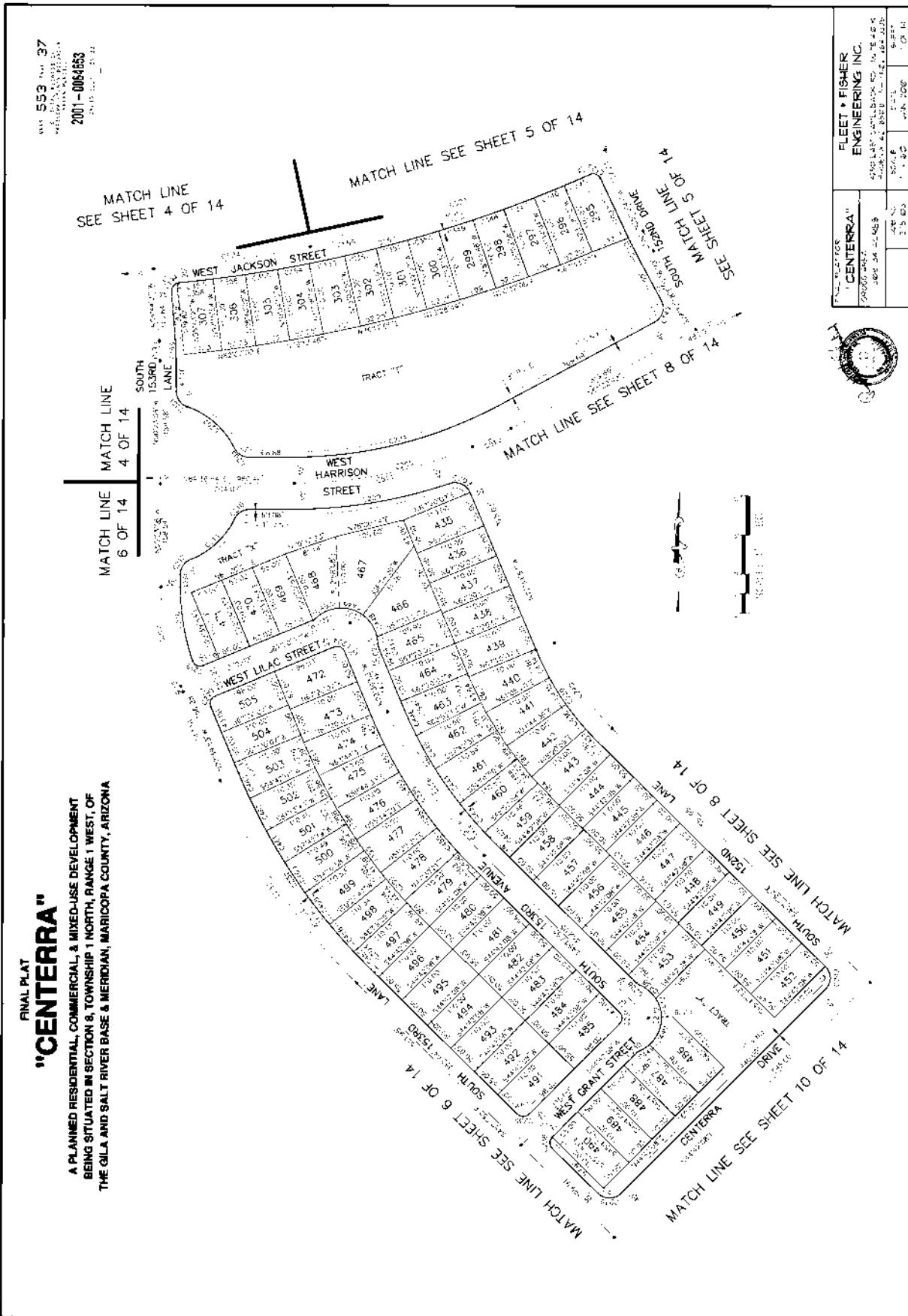
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2001-008463

MATCH LINE  
SEE SHEET 4 OF 14

MATCH LINE

FINAL PLAT  
CEN

A PLANNED RESIDENTIAL, COMMERCIAL, & MIXED-USE DEVELOPMENT  
BEING SITUATED IN SECTION 8, TOWNSHIP 1 NORTH, RANGE 1 WEST, OF  
THE GILA AND SALT RIVER BASE & MERIDIAN, MARICOPA COUNTY, ARIZONA



Page:7 of 14



**FINAL PLAT  
"CENTERRA"**

A PLANNED RESIDENTIAL, COMMERCIAL, & MULTI-USE DEVELOPMENT BEING SITUATED IN SECTION 8, TOWNSHIP 1 NORTH, RANGE 1 WEST, OF THE GILA AND SALT RIVER BASE & MERIDIAN, MARICOPA COUNTY, ARIZONA.

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-NHAU PLAT

MATCH LINE  
SEE SHEET 8 OF 14

FINAL PLAT

MATCH LINE  
SEE SHEET 8 OF 14 | MATCH LINE  
SEE SHEET 5 OF 14

MATCH LINE  
SEE SHEET 5 OF 14

MATCH LINE SEE SHEET 11 OF 14

MATCH LINE  
SEE SHEET 11 OF 14

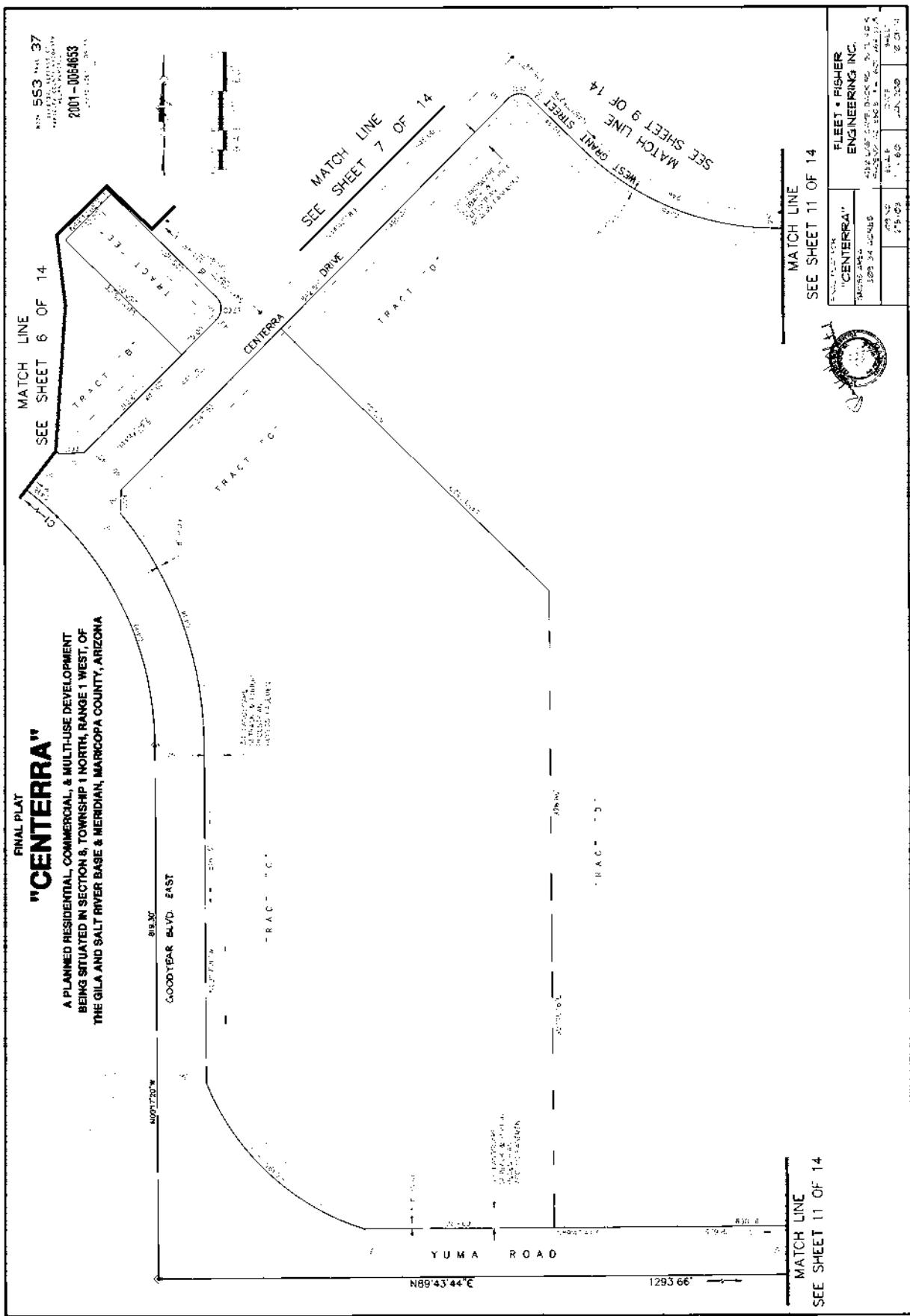
W. K. H.

"CENTERERA" 1925-1945		ENGINEERING, INC.	
1925	1945	1925	1945
1925	1945	1925	1945
1925	1945	1925	1945
1925	1945	1925	1945

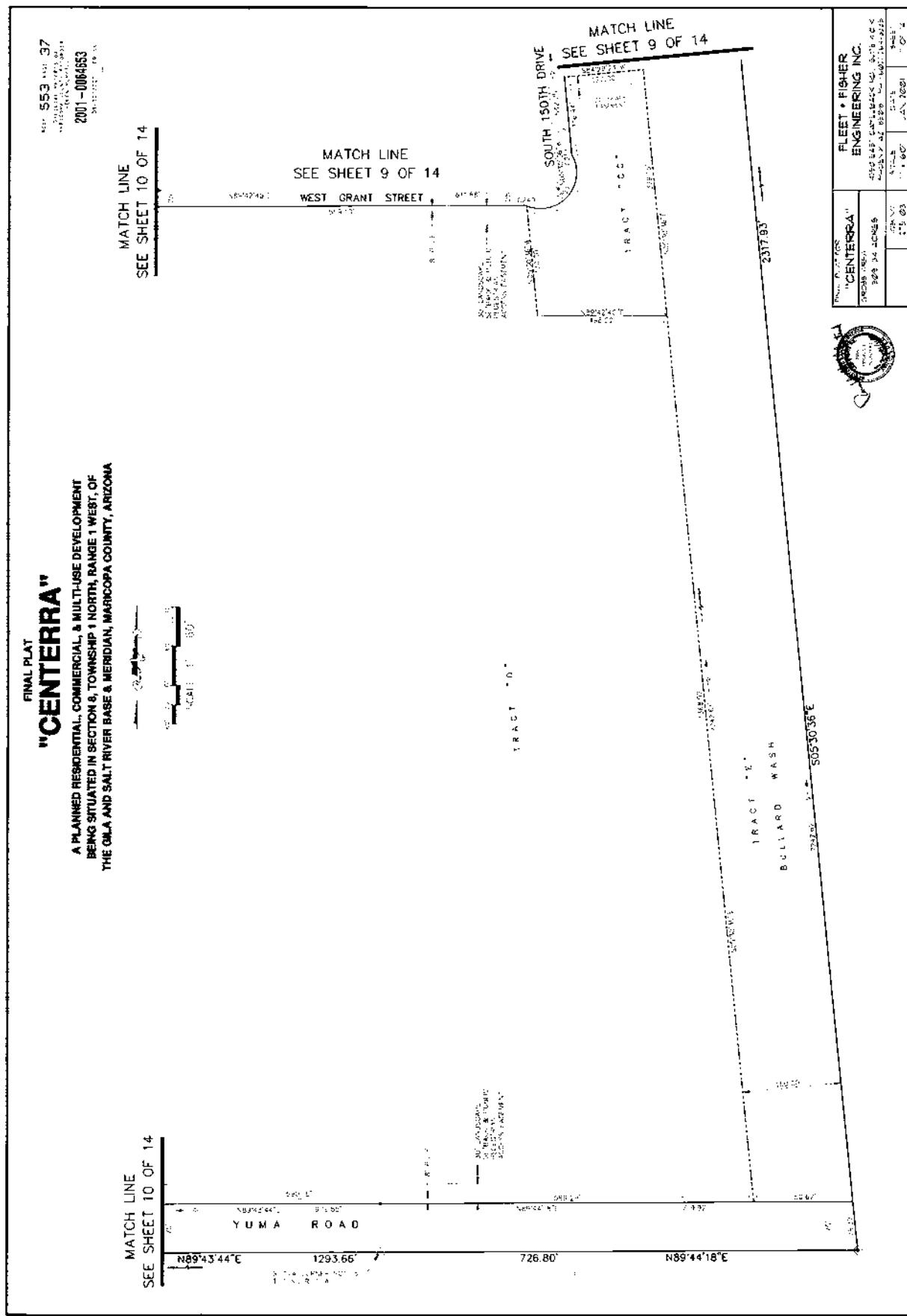
Page:9 of 14

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MARICOPA, AZ Document:PLAT MAP 553.37

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Page:11 of 14

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001-0064653

THE GLIA AND SALT RIVER BASE A MERIDIAN, MARICOPA COUNTY, ARIZONA  
BEING SITUATED IN SECTION 8, TOWNSHIP 1 NORTH, RANGE 1 WEST, OF  
A PLANNED RESIDENTIAL COMMERCIAL & MULTIPURPOSE DEVELOPMENT

“CENTERRA”

Page:12 of 14



FINAL P.LAT.  
"CENTERA"

A PLANNED RESIDENTIAL, COMMERCIAL, & MIXED USE DEVELOPMENT  
BEING SITUATED IN SECTION 8, TOWNSHIP 1 NORTH, RANGE 1 WEST, OF  
THE SALT RIVER BASE & MERIDIAN, MARICOPA COUNTY, ARIZONA

5-3-255

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20021333761 12/12/2002 12:34  
ELECTRONIC RECORDING

Recording requested by:  
NORTH AMERICAN TITLE

2001296A-47-4-1--A  
EmployeeB

WHEN RECORDED MAIL TO:  
Jared L. McHatton  
McHatton Law Office  
3116 E. Shea Blvd., Suite 230  
Phoenix, AZ 85028

Escrow No. 20-01296A

↑ THIS SPACE FOR RECORDER'S USE ONLY ↑

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## RECORDING COVER SHEET

CAPTION HEADING: Declaration of Covenants, Conditions and Restrictions for Centerra  
Single Family Detached

**This document is being re-recorded solely to correct the legal description on Exhibits A, B,  
C and D of that certain document recorded August 2, 2002 in instrument 2002-0790569.**

WHEN RECORDED, RETURN TO:

Jared L. McHatton  
McHatton Law Office  
3116 E. Shea Boulevard  
Suite 230  
Phoenix, AZ 85028

**NORTH AMERICAN TITLE COMPANY**

S/A 20-01296A

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20020790569 08/02/2002 13:25  
2001296A-42-10-5--  
ELECTRONIC RECORDING

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CENTERRA SINGLE-FAMILY DETACHED**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 2nd day of August, 2002, by Centerra LLC, an Arizona limited liability company ("Declarant").

WITNESSETH:

WHEREAS Declarant is the owner of certain real property ("Property") located in the City of Goodyear, Maricopa County, Arizona, described as follows:

**SEE ATTACHED EXHIBIT "A"**

WHEREAS, Declarant intends by the Recording of this Declaration to create a general plan of development for certain property within the planned community known as Centerra. An integral part of the developmental plan is the creation of the Centerra Homeowners' Association, an association composed of all owners of the Property, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be subject to the following reservations, easements, limitations, restrictions, services, covenants, conditions, charges and liens (hereinafter sometimes collectively termed "Covenants and Restrictions") which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors in title and assigns, and shall inure to the benefit of each Owner thereafter.

**ARTICLE 1. DEFINITIONS**

1.1. **"Architectural Committee"** means the committee that may be established by the Board pursuant to Section 3.4 of this Declaration.

1.2. **"Architectural Committee Rules"** means the rules that may be adopted by the Architectural Committee or Association.

1.3. “Articles” means the Articles of Incorporation of the Association which have been or will be filed in the office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

1.4. “Assessment Lien” means the lien granted to the Association by this Declaration to secure the payment of Assessments and all other amounts payable under the Project Documents.

1.5. “Assessments” means the annual and special assessments levied and assessed against each Lot pursuant to Article 4 of this Declaration.

1.6. “Association” means the Arizona non-profit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of “CENTERRA HOMEOWNERS’ ASSOCIATION, an Arizona non-profit corporation”, but if such name is not available, Declarant may organize the Association under such other name as the Declarant deems appropriate.

1.7. “Association Rules” means the rule and regulations adopted by the Association, as the same may be amended from time to time.

1.8. “Board” means the Board of Directors of the Association.

1.9. “Builder” means any Person approved by Declarant who purchases one (1) or more Lots or portions of the Property for further subdivision, development, construction of Dwelling Units and/or resale in the ordinary course of business. A Builder shall not include a Person who purchases a single Lot whereon a single Dwelling Unit may be constructed. Approval by Declarant of a Builder may, in the sole discretion of Declarant, be made conditioned upon an obligation of said Builder to contribute toward the Common Expenses attributable to the Lot(s) acquired by said Builder, beyond the Assessments otherwise payable under this Declaration, until such time that Dwelling Units are constructed and sold by the Builder on said Lot(s).

1.10. “Bylaws” means the Bylaws of the Association, as such Bylaws may be amended from time to time.

1.11. “Common Area” means all real property and the Improvements thereon owned or leased from time to time by the Association for the common use and enjoyment of the Owners, which include generally the following: private storm drains, bike and walking trail systems, easements, the School and Park Sites, any park site, landscaped tracts, certain landscaped areas including those adjacent to and in the set back area near the front entranceway and adjacent to the bike and walking trail systems (but excluding any landscaped area included within the legal description for a Lot), the landscaped area in the roundabout on Harrison Street and the median within the public right-of-way immediately west of the roundabout (to the extent these areas are not maintained by the City of Goodyear), certain perimeter walls and any common facilities within the Project. The Common Area is more specifically described on Exhibits “B” and “C” (subject to the Association’s obligation to transfer all or a part of the School and Park Sites in accordance with Article 16). On or before the date of the first conveyance of a Lot to an Owner

other than Declarant, Declarant shall convey to the Association the Common Area. Declarant shall convey the Common Area to the Association free of all monetary liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), title exceptions of record and the Covenants and Restrictions contained in this Declaration and the instrument which conveys the Common Area to the Association.

1.12. “Common Expenses” means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Project, including but not limited to, the following:

A. maintenance, management, operation, repair and replacement of the Common Area, and all other areas of the Project which are maintained by the Association, as applicable;

B. unpaid Assessments;

C. costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

D. the costs of utilities, trash pickup and disposal, gardening and other services which generally benefit and enhance the value and desirability of the Property;

E. the costs of fire, casualty, liability, workmen’s compensation and other insurance covering the Common Area and other areas of the Property being maintained by the Association;

F. the costs of any other insurance obtained by the Association;

G. reasonable reserves as deemed appropriate by the Board but limited as hereinafter set forth;

H. any costs of bonding of the members of the Board, the president, any professional managing agent or any other person handling the funds of the Association;

I. taxes paid by the Association;

J. amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Area or portions thereof;

K. costs incurred by committees established by the Board; and

L. other expenses incurred by the Association for any reason whatsoever in connection with the Common Area (excepting reconstruction costs and capital improvements as otherwise provided for by special assessments), or the costs of any other item or items designated by this Declaration, the Articles, Bylaws, Association Rules, Architectural Committee Rules, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.13. Declarant shall mean Centerra, LLC, an Arizona limited liability company, and its successors and assigns if such successors or assigns should acquire any interest in the Project from the Declarant for the purpose of development and resale and such acquisition includes a transfer of the Declarant's rights herein pursuant to Recorded instrument executed by the immediately preceding Declarant. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by a successive Declarant, in which event the preceding Declarant shall be released from liability.

1.14. Declaration shall mean the provisions of this document and any amendments thereto.

1.15. Development Agreement means that certain Development Agreement between Declarant and the City of Goodyear recorded March 27, 2000 in the records of Maricopa County at Instrument No. 00-0226391, as may be amended from time to time.

1.16. Dwelling Unit means any building or structure situated upon one (1) Lot and which is intended for use and occupancy as a detached residence for a single family.

1.17. Eligible Insurer or Guarantor means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Article 13 of this Declaration.

1.18. Eligible Mortgage Holder means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Article 13 of this Declaration.

1.19. First Mortgage means any mortgage, deed of trust, deed to secure debt, or any other form of security instrument affecting title on a Lot which has priority over all other mortgages, deeds of trust, deeds to secure debt or any other form of security instrument affecting title on the same Lot.

1.20. First Mortgagee means the beneficiary or holder of any First Mortgage on any Lot.

1.21. Front Yard means the land between any public street and the Dwelling Unit or Yard Wall, including the strip of land between a detached sidewalk and the public street, if any.

1.22. Improvements means buildings, roads, driveways, parking areas, private storm drains, fences, walls, rocks, hedges, plantings, planted trees and shrubs, monuments and all other structures or landscaping improvements of every type and kind.

1.23. Lot means a portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and on which one (1) Dwelling Unit is intended for development, use and occupancy. The term shall refer to the land, if any, which is part of the Lot as well as any Improvements, including any Dwelling Unit, thereon. The boundaries of each Lot shall be delineated on a Plat.

1.24. Member means any person, corporation, partnership, joint venture or other legal entity who or which is an Owner of a Lot.

1.25. “Owner” or “Owners” shall mean one or more Persons who hold the record title to any Lot or portion thereof, including without limitation, one who is buying a Lot under a Recorded agreement of sale, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. In the case of a Lot wherein the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor. In the case of a Lot, the fee simple title to which is vested in a trustee pursuant to a trust agreement, the beneficiary entitled to possession shall be deemed to be the Owner. Each Builder is deemed an Owner for purposes of this Declaration.

1.26. “Person” shall mean a human being, a corporation, a partnership, a trustee, a limited liability company, or any other legal entity.

1.27. “Plat” means a Recorded engineering survey or other surveys for all or a portion of the Property, as amended and supplemented.

1.28. “Project” means the Property, including the Dwelling Units and the Common Area, together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

1.29. “Project Documents” means this Declaration and any applicable supplemental declaration, and the Articles, Bylaws, Association Rules and any Architectural Committee Rules.

1.30. “Property” means all the real property described on attached Exhibit “A”.

1.31. “Rear Yard View Fence” means a fence that is constructed utilizing metal grates or similar materials that generally allow a view through such fence.

1.32. “Record,” “Recording” or “ Recorded” means to file, filing or filed of record in the official records of the Maricopa County Recorder’s Office, Maricopa County, Arizona. The date of Recording shall refer to that time at which a document, map, or Plat is Recorded.

1.33. “School and Park Sites” means the sites described on Exhibit “C”.

1.34. “Sub-Association” means a condominium association or other owners’ association, if any, having concurrent jurisdiction with the Association over a designated area of the Property. Nothing in this Declaration shall require the creation of a Sub-Association for any particular area of the Property.

1.35. “Visible from Neighboring Property” shall mean that an object is or would be visible to a person six feet (6') tall standing on a neighboring lot or street at an elevation not greater than the elevation of the base of the object being viewed.

## **ARTICLE 2. PLAN OF DEVELOPMENT**

2.1. Property Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any

interest in any of the Property subject to this Declaration, each Person or entity, for himself or itself, its heirs, personal representatives, successors, transferees and assigns, binds itself, its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations 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 scheme for the development and use of the Property and hereby evidences its intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by Declarant, the Association, Sub-Associations as to their applicable portion of the Property and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that each shall not separate or separately convey the Lots and the membership in the Association and the other rights created by this Declaration, and such shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot. Upon conveyance of a Lot to an Owner, each Owner shall also receive a non-exclusive right to use the Common Area.

2.2. Name of Project. The Project may be referred to as "Centerra", or such other name as Declarant reasonably determines, provided that Declarant's power to change the name of the Project shall not be unreasonably exercised.

### **ARTICLE 3. THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS**

3.1. Rights, Powers and Duties. The Association shall be a non-profit Arizona corporation invested with the powers prescribed by law and set forth in the Project Documents together with such rights and powers as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

3.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws.

3.3. Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by an invitee, licensee or lessee of such Owner except that the Association Rules may not discriminate among and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

3.4. Architectural Committee. The Board may establish an Architectural Committee consisting of not less than three (3) Persons, one (1) of which shall be a Member, to regulate the external design, appearance and use of the Property and to perform such other functions and

duties as may be imposed upon it by this Declaration, the Bylaws or the Board. So long as the Declarant owns any Lot, the Declarant shall have the right to appoint and remove Persons serving on the Architectural Committee. At such time as the Declarant no longer owns any Lot, the Board shall have the right to appoint and remove individuals of the Architectural Committee.

3.5. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

3.6. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association. The Association or its agent shall have the right to charge a reasonable transfer fee to the new Owner in connection with any transfer of a Lot.

3.7. Classes of Members. The Association shall have two (2) classes of voting membership:

A. Class A. Class A Members shall be all Owners, with the exception of the Declarant while Declarant is a Class B Member. Each Class A Member shall be entitled to one (1) vote for each Lot on which Assessments are payable in accordance with Article 4.

B. Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot on which Assessments are payable in accordance with Article 4. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

(i) When seventy-five percent (75%) of the Lots, based on the aggregate number of Lots as depicted on the Plat or Declarant's most recent development plan, whichever is greater, have been conveyed to Owners; or

(ii) Ten (10) years after the conveyance of the first Lot to an Owner; or

(iii) When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

3.8. Joint Ownership. When more than one (1) Person is the Owner of any Lot, all such Persons shall be Members. The vote(s) for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a whole, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot.

In the event more than one (1) ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

3.9. Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the president, general partner or chief executive officer of such corporation, partnership or association shall have the power to vote the membership.

3.10. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current.

3.11. Termination of Contracts and Leases. A contract for any of the following, if entered into prior to the expiration of the Class B membership in the Association, may be terminated by the Association at any time after the expiration of the Class B membership on thirty (30) days written notice to the other party:

A. Any management contract, employment contract or lease of recreational or parking areas or facilities.

B. Any contract or lease, including franchises and licenses, to which the Declarant or any affiliate of the Declarant is a party.

3.12. Fines. The Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for violation of any provision of the Project Documents by any Owner or such Owner's family, licensees, lessees and invitees. No fine shall be imposed without first providing written warning to the Owner describing the violation and stating that failure to stop the violation or another recurrence of the same violation within six (6) months of the original violation shall make the Owner subject to imposition of a fine. All fines shall constitute a lien on any Lot or portion thereof owned by the Owner and shall be paid within thirty (30) days following imposition. Failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any Assessments under Article 4.

#### **ARTICLE 4. COVENANT FOR MAINTENANCE ASSESSMENTS.**

4.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association annual assessments and special assessments. The annual and special assessments, together, with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot for such Assessment(s). Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessments became due. Upon a transfer of title to a Lot, the grantee shall be jointly and

severally liable for any Assessments and other charges due at the time of conveyance. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of Assessments at the closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in two or more installments. Unless the Board otherwise provides, the Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying Assessments or other charges levied on his Lot, the Board may require the outstanding balance on all Assessments to be paid in full immediately.

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

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

The Association or its agent shall, upon written request from an Owner, First Mortgagee, or other Person designated by Owner, furnish a certificate, in recordable form, signed by an officer of the Association or its agent setting forth whether Assessments for such Owner's Lot have been paid and any delinquent amount. Such certificate shall be binding upon the Association, the Board, and the Owners. If the Association or its agent fails to provide such certificate within ten (10) business days of its receipt of a request, any lien for unpaid Assessments then due shall be extinguished, if Arizona law requires extinguishment in such case. The Association or its agent may require the advance payment of a reasonable processing fee for the issuance of such certificate.

**4.2. In Lieu of Lot Assessments/Declarant's Option to Fund Budget Deficits.** During the Class B membership period, Declarant may satisfy its obligation for Assessments on Lots which it owns either by paying such Assessments in the same manner as any other Owner or by paying the difference between the amount of Assessments levied on all other Lots subject to Assessment and the amount of actual expenditures by the Association during the fiscal year (the "budget deficit"). Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to pay the budget deficit. After cessation of the Class B membership period, Declarant shall pay Assessments on its unsold Lots in the same manner as any other Owner. Any service or materials provided to the Association by Declarant or its affiliates shall be charged to the Association at an amount not exceeding the fair market value of such materials or services. After cessation of the Class B membership period, Declarant shall pay Assessments on its unsold Lots in the same manner as any other Owner.

If during any Assessment period Declarant conveys any real property subject to this Declaration (the "Sale Property") for which Declarant has elected to pay the budget deficit, rather than Assessments on a per Lot basis, then the Association may require the grantee of the Sale Property to pay to the Association an amount equal to the pro rata portion of the Assessments that would have been payable with respect to the Sale Property for the applicable Assessment period had Declarant not made such election; provided the grantee shall have no such obligation if the Sale Property is otherwise exempt from Assessment pursuant to Section 4.10. The amount of such pro rata portion shall be based on the number of days remaining in the Assessment period in which such conveyance occurs.

**4.3. Annual Assessment.**

A. For each fiscal year of the Association, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes to be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Area and those parts of the Lots, if any, which the Association has the responsibility of maintaining, repairing or replacing under the Project Documents, (ii) the cost of wages, materials, insurance premiums services, supplies and maintenance or repair of the Common Area and for the general operation and administration of the Association, (iii) the amount required to render to Owners all services required to be rendered by the Association under the Project Documents and, (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements in the future.

B. For each fiscal year of the Association commencing with the year in which the first Lot is conveyed to an Owner or Builder, the total amount of the estimated Common Expenses shall be assessed equally to the Lots, taking into account the Reduced Assessment for Builders and the Declarant as set forth in the subsequent Sub-Section.

C. Each Builder and the Declarant shall be obligated to pay only twenty-five percent (25%) of the annual assessment attributable to its Lot(s) until the earlier of (i) the date on which a certificate of occupancy or similar permit is issued by the appropriate governmental authority as to such Lot, (ii) six (6) months from the date on which a building permit is issued by the appropriate governmental authority for construction of a Dwelling Unit on such Lot, or (iii) thirty (30) months after the Lot was conveyed to the Builder by the Declarant; the foregoing reduced Assessment to Builders and Declarant is referred to herein as the "Reduced Assessment". If a Lot ceases to qualify for the Reduced Assessment during the period to which an annual assessment is attributable, the annual assessment shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for each rate.

D. Until seventy-five percent (75%) of the Lots have been conveyed to Owners or Builders, the Declarant shall pay to the Association any amounts which, in addition to the annual assessments levied by the Association, may be required by the Association in order for the Association to fully perform its duties and obligations under the Project Documents, but specifically excluding the obligation to pay and maintain adequate reserve accounts for replacement or otherwise. This obligation shall be reduced by any amounts that Builders pay to

the Association in addition to the Assessments, as required by Declarant as a condition to approval as a Builder hereunder. Notwithstanding the foregoing, Declarant shall have no obligation to pay any amounts during any calendar year in excess of the amount that it would have paid if its payments were made on the same basis as Owners of Lots, and shall have no obligation greater than the amount of actual expenses incurred by the Association during such period.

E. The Board shall give notice of the annual assessments to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment.

F. If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the annual assessment for that fiscal year and the revised annual assessment shall commence on the date designated by the Board.

4.4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. Special assessments shall be levied in the same manner as estimated Common Expenses.

4.5. Limitation on Increases of Assessments. Notwithstanding any provision to the contrary, the Board may not impose an annual assessment increase or special assessment exceeding that allowable under Arizona law.

4.6. Notice and Quorum for Any Action Authorized Under Section 4.3 or 4.4. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of the Members is required under Sections 4.3 and 4.4 shall be sent to all Members no less than thirty (30) days nor more than ninety (90) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies entitled to cast sixty percent (60%) of all the votes of the Members shall constitute a quorum, irrespective of whether the votes are comprised of Class A or Class B Members. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than ninety (90) days following the preceding meeting.

4.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according

to the number of months remaining in the fiscal year of the Association. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment.

4.8. Effect of Non-Payment of Assessments; Remedies of the Association.

A. Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment or installment first became due shall (i) bear interest from the due date at the rate of ten percent (10%) per annum, and (ii) be subject to a reasonable late charge as determined by the Board. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The Assessment Lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (i) the name of the delinquent Owner as shown on the records of the Association or as reasonably determined by the Association, (ii) the legal description or street address of the Lot against which the claim of lien is made, (iii) the amount claimed as of the date of the recording of the notice including late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees, and (iv) the name and address of the Association.

B. The Assessment Lien shall have priority over all liens or claims created subsequent to the recordation of the Notice of Claim of Lien except for (i) tax liens for real property taxes on the Lot, (ii) assessments on any Lot in favor of any municipal or other governmental body and (iii) the lien of any First Mortgage.

C. Before recording a Notice of Claim of Lien against any Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with late charges, interest, reasonable collection costs and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the Owner. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

D. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with late charges, interest, lien recording fees, reasonable collection costs, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

4.9. Subordination of the Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. The sale or transfer of any Lot shall not affect the

Assessment Lien except that the sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure of a First Mortgage or any proceeding in lieu thereof shall extinguish the Assessment Lien as to payments which became due prior to the sale or transfer. No sale or transfer shall relieve the Lot Owner from liability for any Assessments thereafter becoming due or from the lien thereof.

4.10. Exempt Property. The following property shall be exempt from payment of Assessments:

- A. All Common Area including the School and Park Sites;
- B. Any and all dedicated property including, without limitation such areas created by or dedicated in the form of easements, including, perpetual easements, tract easements, and easements in favor of the City of Goodyear; and
- C. Property owned by any Sub-Association for the common use and enjoyment of its members, or owned by the members of a Sub-Association as tenants-in-common.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

4.11. Maintenance of Reserve Fund. Out of the annual assessments to Owners (but specifically not from Reduced Assessments payable by Declarant or Builders), the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of Improvements to the Common Area. Initially, one percent (1%) of the annual assessments shall be deposited into the reserve fund; however, the Association shall have the right to adjust the percentage as it deems appropriate in the future. The initial percentage is established as one percent (1%) in light of the relatively low anticipated maintenance, repair and replacement costs.

4.12. No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

## **ARTICLE 5. USE RESTRICTIONS**

5.1. Residential Use. Except as otherwise provided herein, all Lots shall be improved and used only for residential use. No gainful occupation, profession, trade or other commercial activity conducted on or within any Lot shall be permitted if, in the opinion of the Association or its agent, such activity increases the traffic or noise levels experienced by the surrounding area to any significant extent. Notwithstanding the foregoing, the Declarant may use the Lots for such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale of residential Dwelling Units, including, without limitation, business

offices, storage areas, construction yards, signs, model site or sites, and a display and sales offices. Further, Declarant may allow Builders to utilize Lots for similar purposes. Notwithstanding the foregoing, home businesses are permitted provided they are in accordance with the City of Goodyear rules and zoning ordinances.

5.2. Building Type and Size. No building or Improvement shall be constructed or permitted to remain on any Lot unless approved in writing by the Declarant or Architectural Committee, as applicable. All buildings shall be of new construction and no prefabricated structure shall be placed upon any Lot if Visible from Neighboring Property; storage structures and/or a sales office may be maintained upon any Lot by the Declarant or a Builder (as allowed by Declarant) for the purpose of erecting and selling Dwelling Units, but such temporary structures shall be removed upon completion of construction or selling of all Dwelling Units, whichever is later. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

5.3. Signs. No signs shall be displayed on any Lot except the following:

- A. signs used by Declarant or a Builder (as allowed by Declarant) to advertise the Dwelling Unit(s) for sale or lease;
- B. one temporary for sale or for rent sign with a total face area of five square feet or less;
- C. security service signs;
- D. such signs as may be required by law;
- E. one residential identification sign with a total face area of eighty (80) square inches or less specifying the Dwelling Unit address and residents' names; and
- F. signs approved by the Architectural Committee.

All signs must conform to applicable City of Goodyear ordinances.

5.4. Noxious and Offensive Activity. No noxious or offensive activity shall be allowed on the Lots nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners and tenants of their respective Dwelling Units. Without limiting the generality of the foregoing, no speakers, horns, sirens or other sound devices except security devices, used exclusively for security purposes, shall be located or used on a Lot.

5.5. Motor Vehicles.

A. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat trailer or other similar equipment or other motor vehicle of any kind shall be parked, kept or maintained on any Lot or on the Common Area except for motor vehicles which are owned by any guest or invitee of any Owner or tenant and

which are parked on a Lot only during such time as the guest or invitee is visiting the Owner or tenant but in no event shall such a motor vehicle be parked on a Lot for more than seven (7) days during any six (6) month period of time. Further, all motor vehicle parking must conform to the City of Goodyear laws and regulations.

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

5.6. Parking. All vehicles of Owners and of their family, lessees, employees, guests and invitees shall be kept in garages or residential driveways of the Owners wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking is otherwise prohibited by this Declaration or the parking of any inoperable vehicle.

5.7. Towing of Vehicles. The Association shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment towed is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and his Lot, and such cost shall be secured by the Assessment Lien.

5.8. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or improvements constructed by the Declarant or approved by the Association or Architectural Committee.

5.9. Restrictions and Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant and no portion less than all or an undivided interest in all of any Lot shall be conveyed or transferred by any Owner other than the Declarant or as approved by Declarant. Notwithstanding the foregoing and subject to compliance with any applicable city ordinances, a vacant Lot may be split between the Owners of the Lots adjacent to such Lot so that each portion of such Lot would be held in common ownership with another Lot adjacent to that portion.

5.10. Windows. Within sixty (60) days of occupancy, each Owner shall install permanent draperies or suitable window treatments on all windows facing the street and Common Areas. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows.

5.11. HVAC and Solar Panels. Except as initially installed by the Declarant, no heating, air conditioning, evaporative cooling or solar energy-collecting unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Association or Architectural Committee.

5.12. Garages and Driveways. The interior of all garages situated on any Lot shall be maintained in a neat and clean condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and materials and shall not be used for or converted to living quarters or recreational activities without the prior written approval of the Association or Architectural Committee. Garage doors shall be left open only as needed for ingress and egress.

5.13. Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or Builders or their duly authorized agents, of model homes, structures, improvements or signs necessary or convenient to the construction, development, identification, or sale or lease of Lots or Dwelling Units or other Property within the Project, upon the approval of the Declarant.

5.14. Leasing Restrictions. Any lease or rental agreement must be in writing and shall be subject to the Declaration. All leases must have a minimum term of thirty (30) days.

5.15. Animals. No animals, insects, livestock, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure thereon except that dogs, cats or other common household pets may be kept on any Lot or within any Dwelling Unit, provided they are not kept, bred or maintained for any commercial purpose, and provided there are no more than four (4) such animals per Dwelling Unit. Notwithstanding the foregoing, no animals or fowl may be kept on any Lot or within any Dwelling Unit which results in an annoyance to or are obnoxious to other Owners or tenants in the vicinity. All pets must be kept within a fenced yard or on a leash under the control of the Owner at all times. No structure for the care, housing or confinement of any animal or fowl shall be maintained so as to be Visible from Neighboring Property.

5.16. Drilling and Mining. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for or removing water, oil, natural gas or other minerals shall be erected, maintained or permitted upon any Lot.

5.17. Refuse. All refuse shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Refuse containers shall be kept clean, sanitary and free of noxious odors. Refuse containers shall be maintained so as to not be Visible from Neighboring Property, except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection.

5.18. Antennas and Satellite Dishes. No antenna, satellite television dish, or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be permitted outdoors on any Lot, whether attached to a building or structure, unless approved in writing by the Architectural Committee or Association, or

allowed pursuant to applicable law, with such screening and fencing as such Committee or Association may require.

5.19. Utility Services. All lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee or Association. Temporary power or telephone structures incident to construction activities approved by the Architectural Committee or Association are permitted.

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

5.21. Yard Landscaping. Every Owner of a Lot on which a detached single family residence is constructed will be required to complete the landscaping in its Front Yard within sixty (60) days of the issuance of a certificate of occupancy for the Dwelling Unit and to thereafter maintain the same. An Owner of any such Lot having a width of less than fifty-five (55) feet shall include a minimum of two (2) twenty-four (24) inch box trees of a minimum height of six (6) feet each in its Front Yard landscaping, at least one (1) of which will be placed in the strip of land between the detached sidewalk and the public street. An Owner of any such Lot having a width equal to or greater than fifty-five (55) feet shall include at least one (1) twenty-four (24) inch box tree of a minimum height of six (6) feet in the landscaping in any strip of land between a detached sidewalk and the public street bordering its Lot. An Owner of a Lot on which a fire hydrant has been located shall not place any landscaping (except groundcover) within a seven (7) foot clearance area in all directions from the fire hydrant. All Owners whose Lots have a Rear Yard View Fence will be required to complete their rear yard landscaping within ninety (90) days of the issuance of a certificate of occupancy for the Dwelling Unit. All other Owners of Lots will be required to complete their rear yard landscaping within one hundred twenty (120) days of the issuance of a certificate of occupancy for the Dwelling Unit.

5.22. Architectural Control.

A. No excavation or grading work shall be performed on any Lot without the prior written approval of the Association or the Architectural Committee.

B. No Improvements shall be constructed or installed on any Lot without the prior written approval of the Association or the Architectural Committee.

C. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including without limitation, the exterior color scheme of any Improvements, shall be made or done without the prior written approval of the Association or the Architectural Committee.

D. Owner desiring approval of the Association or Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of the Improvement, shall submit to the Association or the Architectural Committee, as applicable, a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration,

repair, change or replacement of any Improvement which the Owner desires to perform. Any Owner requesting the approval of the Association or Architectural Committee shall also submit any additional information, plans and specifications which the Association or Architectural Committee may request. In the event that the Association or Architectural Committee fails to approve or disapprove a completed application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. The Association and the Architectural Committee reserve the right to charge a fee for reviewing an Owner's request for approval. Said fee may include, but not be limited to, any costs incurred by the Association or the Architectural Committee with any outside consultant, including but not limited to architects and engineers, to review Owner's request for approval.

E. The approval by the Association or Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Association's or Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

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

G. The approval of the Association or Architectural Committee required by this Section shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Project.

H. The provisions of this Section shall not apply to, and approval of the Association or 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, the Declarant.

#### **ARTICLE 6. ASSOCIATION RIGHTS TO ALLOW NON-OWNERS USE/LEASE OF COMMON AREA**

The Association shall have the right to allow the use of portions of the Common Area for purposes it deems appropriate, by third parties other than Owners, Declarant or Builders, provided that the amount of income generated from such activities shall not cause the non-profit qualifications of the Association to lapse.

## **ARTICLE 7. VARIANCES**

Provided such action is not contrary to any City of Goodyear requirements, the Board may, at its option and in extreme extenuating circumstances, grant variances from the restrictions set forth in Article 5 of this Declaration or in any Sub-Association declaration, if the Board determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner, or (ii) that a change of circumstances since the recordation of this Declaration or the Sub-Association declaration has rendered such restriction obsolete and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners of the Property and is consistent with the high quality of life intended for residents of the Property. The burden of proof shall be on the Owner seeking the variance.

## **ARTICLE 8. RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT.**

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Owners, to resubdivide and replat any portion of the Property which it owns, upon the approval of the City of Goodyear.

## **ARTICLE 9. PERIMETER WALLS, YARD WALLS AND PARTY WALLS**

9.1. **Perimeter Wall.** All perimeter walls, if any, constructed at the Project ("Perimeter Wall") shall be maintained as follows. The exterior surface of a Perimeter Wall facing away from the Project shall be maintained by the Association. Where a Perimeter Wall borders a Lot, the Lot Owner shall maintain the interior surface of a Perimeter Wall facing the Owner's Lot. Where a Perimeter Wall borders Common Area, the Association shall maintain the interior surface of a Perimeter Wall facing the Common Area. The reasonable cost of repair for any damage to a Perimeter Wall caused by an Owner or its guests, tenants, licensees, agents or family members (whether or not such act is negligent or otherwise culpable), shall be borne by the Owner. Owners shall have no right to move or alter a Perimeter Wall in any manner whatsoever, including, but not limited to, the addition of stucco or any other decorative feature, without the written consent of the Association or the Architectural Committee. To the extent such written consent is granted, the Association shall have no responsibility to repair or replace such alteration at any time and approval may be conditioned on the agreement of the Owner to maintain, repair and replace that portion of a Perimeter Wall at the sole expense of the Owner.

9.2. **Disclosure.** DECLARANT HEREBY DISCLOSES TO ALL PURCHASERS OR PERSONS INTERESTED IN PURCHASING LOTS, THAT A PERIMETER WALL MAY NOT RUN ON THE DIVIDING LINE BETWEEN THE LOTS AND COMMON AREAS IN THE PROJECT, AND THAT A PERIMETER WALL MAY BE LOCATED INSIDE THE ACTUAL LOT LINES. OWNERS SHALL HAVE NO RIGHT TO MOVE OR ALTER A PERIMETER WALL FROM ITS ORIGINAL LOCATION OR AS CONSTRUCTED BY DECLARANT NOTWITHSTANDING THAT SAID WALL MAY NOT BE ON THE DIVIDING LINE OR PERIMETER OF EACH OWNER'S LOT(S) OR MAY BE ON AN OWNER'S LOT RESTRICTING THE USE IN PART OF THE LOT BY THE OWNER, WITHOUT THE WRITTEN CONSENT OF THE ASSOCIATION OR ARCHITECTURAL COMMITTEE.

9.3. General Rules of Law to Apply to Yard and Party Walls. Each wall or fence, any part of which is placed on a dividing line between separate Lots shall constitute a "Party Wall". Each adjoining Owner's obligation with respect to Party Walls shall be determined by these Covenants and Restrictions and, if not inconsistent, by Arizona law. All other walls or fences constructed by Declarant or a Builder that surround the back and/or side yards of individual Lots and which are not part of the Perimeter Wall, shall constitute a "Yard Wall".

9.4. Sharing Repair and Maintenance for Yard and Party Walls. Each Owner shall maintain the exterior surface of a Party Wall facing its Lot. Except as provided in this Article, the cost of reasonable repair shall be shared equally by adjoining Lot Owners. Each Owner shall maintain the exterior surface of a Yard Wall facing its Lot and each Owner shall make any repairs to its Yard Walls. The Association shall maintain the exterior surface of a Yard Wall facing a Common Area or a right-of-way.

9.5. Damage by One Owner. If a Party Wall is damaged or destroyed by the act of one adjoining Owner, or its guests, tenants, licensees, agents or family members (whether or not such act is negligent or otherwise culpable), then that Owner shall immediately rebuild or repair the Party Wall to its prior condition without cost to the adjoining Owner.

9.6. Other Damages. If a Party Wall is damaged or destroyed by any cause other than the act of one of the adjoining Owners, its agents, tenants, licensees, guests or family members (including ordinary wear and tear and deterioration from lapse of time), then the adjoining Owners shall rebuild or repair the Party Wall to its prior condition, equally sharing the expense; provided, however, that if a Party Wall is damaged or destroyed as a result of an accident or circumstances that originate or occur on a particular Lot (whether or not such accident or circumstance is caused by the action or inaction of the Owner of that Lot, or his agents, tenants, licensees, guests or family members) then in such event, the Owner of that particular Lot shall be solely responsible for the cost of rebuilding or repairing the Party Wall and shall immediately repair it to the same condition that previously existed for such Party Wall.

9.7. Right of Entry. Each Owner shall permit the Owners of adjoining Lots, or their representatives, to enter its Lot for the purpose of installations, alteration, or repairs to a Party Wall on the property of such adjoining Owners, provided that other than for emergencies, request for entry is made in advance and that such entry is at a time reasonably convenient to the Owner of the adjoining Lot. An adjoining Owner making entry pursuant to this Section shall not be deemed guilty of trespassing by reason of such entry. Such entering Owner shall indemnify the adjoining Owner from any consequential damages sustained by reason of such entry.

9.8. Right of Contribution. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

9.9. Consent of Adjoining Owner. In addition to meeting the requirements of this Declaration and of any applicable building code and similar regulations or ordinances, any Owner proposing to modify, alter, make additions to or rebuild a Party Wall, shall first obtain the written consent of the adjoining Owner.

**ARTICLE 10. MAINTENANCE BY ASSOCIATION**

10.1. Maintenance of Common Area By Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval by the Owners, do any of the following:

A. Reconstruct, repair, replace or refinish any building, improvement or portion thereof upon the Common Area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

B. Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, trail or driveway;

C. Replace injured and diseased trees or other vegetation in any such 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;

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

E. 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 the Common Area, any easements, and any future easements.

10.2. Maintenance of Dwelling Units by Owners. Except as hereinafter provided, each Owner of a Lot shall be solely responsible for the maintenance of all portions of its Lot. The Owner of each Lot shall at all times perform its obligations under this Section so that the land and Improvements comprising its Lot shall be in good condition and repair. Such obligations of Owner shall include keeping all shrubs, trees, grass, plantings and landscaping of every kind on the front, back and side yards of its Lot properly cultivated and free of trash, weeds and other unsightly material. All maintenance of the exterior of the Improvement, including without limitation walls, fences and roofs, shall be accomplished in accordance with the requirements of the Association or Architectural Committee.

10.3. Damage or Destruction by Owners. No Owner shall in any way (a) damage or destroy any Common Area improvements, or (b) interfere with the activities of the Association in connection with the Common Area. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner to the Association upon its demand to the extent that the Owner is liable therefor under Arizona law, and such amounts shall be a lien on any Lot owned by such Owner, and the Association may enforce collection of any such amounts in the same manner as provided for the collection and enforcement of Assessments.

10.4. Non-performance by Owners. If any Owner fails to maintain any portion of the land and Improvements comprising its Lot which it is obligated to maintain under the provisions of this Declaration and Project Documents, then the Association shall have the right, but not the

obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by such Owner upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided for the collection and enforcement of Assessments.

10.5. Total or Partial Destruction. If any Dwelling Unit is totally or partially destroyed, the Owner shall either rebuild the structure or demolish the structure and remove the debris from the Project. Any demolition (whether from partial or complete destruction) will be completed within ninety (90) days from the date of destruction. Reconstruction of a partially destroyed Dwelling Unit shall be completed within twelve (12) months from the date of destruction. Reconstruction of a totally destroyed Dwelling Unit shall be completed within eighteen (18) months from the date of destruction. If the Owner fails to comply with this Section, the Association may undertake the work on the Owner's behalf and charge the Owner therefor. The Association may enforce collection of such amounts in the same manner and to the same extent as provided for the collection and enforcement of Assessments.

## **ARTICLE 11. EASEMENTS**

### **11.1. Owner's Easements of Enjoyment.**

A. Every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

(i) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board. Unless otherwise required by zoning stipulations or agreements with the County or any municipality having jurisdiction over the Project, or any part thereof, effective prior to the date hereof or specified on a Recorded subdivision Plat, or unless such dedication or transfer is made in accordance with Article 16 herein, no such dedication or transfer shall be effective unless an instrument signed by the Owners representing two-thirds (2/3) of the votes of the membership in the Association agreeing to such dedication or transfer has been Recorded.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit or limit access to such portions of the Common Area, such as landscaped rights-of-way, not intended for use by the Owners.

B. If a Dwelling Unit is leased or rented by the Owner thereof, the Lessee and Persons residing with such Lessee pursuant to the lease shall have the right to use the Common Area during the term of the lease.

C. The guests and invitees of any Member or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area provided they are accompanied by a Member or other person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to limit the

number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

11.2. Drainage Easements. There is hereby created a blanket easement for drainage of groundwater on, over and across each Lot in such locations as drainage channels or structures are located, such easement to benefit the Property, Common Area and adjoining parcels of real property within the final Plat for Centerra. An Owner shall not at any time hereafter fill, block or obstruct any drainage easements, channels or structures on his Lot and each Owner shall repair and maintain all drainage channels and drainage structures located on his Lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow within the drainage easements which may impede the flow of water under, over or through the easements. All drainage areas shall be maintained by the Owner of the Lots on which the easement area is located.

11.3. Utility Easements. Except as installed by the Declarant or approved by the Association or Architectural Committee, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, cable and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No structure of any kind (except wood, wire or removable section type fencing and/or paving), no landscaping except grass, nor any other Improvement shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement. Such public utility easement areas, and all Improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless the utility company or a county, municipality or other public authority maintains said easement area. Owners are hereby put on notice that the City of Goodyear shall not be required to replace any structures or landscaping in said public utility easement that must be removed during the course of maintenance, construction or reconstruction of any utilities.

11.4. Reservation of Utility Easement. Easements over the Lots for the installation and maintenance of electric, telephone cable, communications, water, gas, drainage and sanitary sewer or similar or other lines, pipes or facilities:

A. as shown on the Recorded Plat;

B. as may be hereafter required or needed to service any Lot (provided, however, no utility other than a connection line to a Dwelling Unit served by the utility shall be installed in any area upon which a Dwelling Unit has been or may legally be constructed on the Lot) are hereby reserved by the Declarant, together with the right to grant and transfer the same.

11.5. Maintenance Easement. There is hereby created a blanket easement in favor of the Association for purposes of maintenance of walls in accordance with Article 9.

11.6. Encroachments. The Lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent Lots as constructed by the Declarant or a Builder or as reconstructed or repaired in accordance with the original plans and

specifications or as a result of the reasonable repair, shifting, settlement or movement of any such structure. Any encroachments must be in accordance with City of Goodyear and other local laws and regulations.

11.7. Adjoining Parcels. The Association shall have the right to grant such easements, use and other agreements relating to the development of the Property and the adjoining parcels of real property within the final Plat for Centerra, based upon a majority vote of the Board, without consideration, to further the use and development of the Property and adjoining parcels, for purposes of drainage, utilities, ingress and egress and encroachments by walls, fences and other structures constructed by the Declarant.

## **ARTICLE 12. INSURANCE**

12.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

A. Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area with deductibles and other provisions as determined by the Board;

B. Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than One Million Dollars (\$1,000,000). Such insurance shall cover all occurrences commonly insured against including death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

C. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

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

E. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) The Association shall be named as the Insured;

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the First Mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

F. If there is a steam boiler in connection with the Common Area, boiler explosion insurance evidenced by the standard form of boiler machinery insurance policy and providing coverage in the minimum amount of fifty thousand dollars (\$50,000) per accident per location;

G. "Agreed Amount" and "Inflation Guard" endorsements.

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

12.3. Fidelity Bonds.

A. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of fidelity bond maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, (iii) the sum equal to three months Assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

(i) The fidelity bonds shall name the Association as an obligee;

(ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based

(iii) The bonds shall provide that they may not be canceled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association.

B. The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to Subsection (A) of this section. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

12.4. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

12.5. Insurance Obtained by Owners. Each Owner shall be responsible for obtaining property insurance for its own benefit and at its own expense covering its Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at its expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of its Lot.

12.6. Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any First Mortgagee.

12.7. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association after receipt of insurance proceeds to undertake such repairs and replacement, unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners comprising at least sixty percent (60%) of the membership votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis consistent with the allocation of Assessments under Article 4.

## **ARTICLE 13. RIGHTS OF FIRST MORTGAGEES**

13.1. Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor for a First Mortgage informing the Association of its correct name and mailing address and the Lot description or Dwelling Unit number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

A. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot or Dwelling Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;

B. Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by the Owner of any obligation under the Project Documents, which delinquency remains uncured for the period of sixty (60) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

D. Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in the following two (2) Sections of this Declaration.

13.2. Approval Required to Terminate Project. Any termination of the legal status of the Project for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding at least sixty-seven percent (67%) of the First Mortgages against the Lots at the Project.

13.3. Approval Required for Amendment to Declaration, Articles or Bylaws.

A. Subject to the rights of the Declarant to amend as otherwise set forth herein, the approval of Eligible Mortgage Holders holding at least fifty-one percent (51%) of the First Mortgages against the Lots at the Project shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- (i) Voting rights;
- (ii) Assessments, Assessment Liens or subordination of Assessment Liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Project, or the addition, annexation or withdrawal of Property to or from the Project;
- (vii) Boundaries of any Lot;

(viii) Reallocation of interests in the Common Areas or the rights to their use, except as such interests may be affected by Article 16 herein;

(ix) Convertibility of Lots into Common Areas or of Common Areas into Lots, except in accordance with Article 16 herein;

(x) Leasing of Lots;

(xi) Imposition of any restrictions on an Owner's right to sell or transfer his Lot;

(xii) A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder.

(xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;

(xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;

(xv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

B. Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws which are not material who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

13.4. Annexation by Declarant. Notwithstanding the foregoing, the Declarant may annex additional residential property and Common Area within the lands described on Exhibit D attached hereto and incorporated herein by this reference, until that date which is six (6) years after the date of recording of this Declaration in Maricopa County, Arizona, without consent of the individual Owners. Each such annexation shall be effected, if at all, by recording an annexation of additional land in the Office of the Recorder of the County of Maricopa, Arizona, which document shall provide for annexation to this Declaration of the property described in such annexation of additional land, and may include such other provisions as deemed appropriate by the Declarant. All provisions of this Declaration, including but not limited to those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon recording an annexation of additional land with respect thereto, as aforesaid. Prior to transferring ownership of the first Lot conveyed in the Properties and in any property which is annexed by Declarant pursuant to this Section 6, Declarant shall convey the Common Area contained in the Properties or in such annexed property, as applicable, to the Association.

13.5. First Mortgagee Not Liable for Prior Assessments. Any First Mortgagee or any other party acquiring title or coming into possession of a Lot through foreclosure of a First

Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition by the First Mortgagee or other party. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

13.6. First Mortgagee's Right of Inspection of Records. Any First Mortgagee will, upon written request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

13.7. Prior Written Approval of First Mortgagees. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the Declarant or a Builder) for the individual Lots have given their prior written approval, the Association shall not be entitled to:

A. By act or omission seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area, the granting of easements under Article 11.7 and the transfer of the School and Park Sites in accordance with Article 16 shall not be deemed transfers within the meaning of this subsection);

B. Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;

C. By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units, the exterior maintenance of Lots, and the Improvements located thereon, the maintenance of the Common Area, walls or fences and driveways, or the upkeep of lawns and plantings in the Project;

D. Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

13.8. Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Declaration and any other provision of the Project Documents, the provisions of this Declaration shall prevail.

## **ARTICLE 14. DISCLOSURES**

14.1. Overflight. All Owners are hereby given notice that the Project is subject to possible noise intrusion, vibrations, falling debris, dust and all other intrusions that may be caused by overflights (including Super Cargo Operations) and by proximity to the Phoenix-

Goodyear Airport and Luke Air Force Base. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of such Owner's Lot can be affected by the effects as noted above.

14.2. Agricultural. All Owners are hereby given notice that the Project is adjacent to real property subject to agricultural uses and is therefore subject to noise, dust, and odors associated with such a use. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of such Owner's Lot can be affected by the effects as noted above.

#### **ARTICLE 15. SUB-ASSOCIATIONS**

This Declaration recognizes the possibility that, at a future date, there may be one (1) or more Sub-Associations formed relating to some part of the Property. Although the jurisdiction of the Sub-Association will be concurrent with the Association with respect to the designated group of Lots covered thereby, said jurisdiction shall at all times be subordinate to that of the Association. Any and all declarations of covenants, conditions and restrictions (or any similarity denominated instrument) for any and all Sub-Associations shall be approved by the Association prior to Recording the same.

The Association shall have oversight authority over any action taken or proposed by a Sub-Association and may, in its discretion, veto a Sub-Association's actions or decisions determined to be contrary to the general scheme of development for the Project. In addition, although a Sub-Association will be primarily responsible for enforcement and design review for its designated group of Lots, the Association shall have the power to take action against, or require that specific action be taken by, an Owner or a Sub-Association, and to enforce the terms of this Declaration or any Sub-Association declaration. Such actions may include requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor. The Sub-Association or Owner shall take the appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Sub-Association or Owner fails to comply, the Association shall have the right and easement to effect such action and may levy Assessments to cover its costs, as well as administrative charges and sanctions. If set forth in a Sub-Association declaration, the Board shall appoint one (1) or more representatives to serve on such Sub-Association's board of directors. For those portions of the Project not subject to a Sub-Association declaration, the Association shall be primarily responsible for the enforcement of this Declaration and any other covenants, conditions and restrictions separately Recorded against such property.

#### **ARTICLE 16. SCHOOL AND PARK SITES**

Declarant shall convey to the Association the School and Park Sites described in Exhibit "C" free of all monetary liens or encumbrances except current real property taxes and assessments (which taxes and assessments shall be prorated as of the date of conveyance), title exceptions of record and the covenants, conditions, reservations and restrictions contained in this Declaration and the instrument which conveys the School and Park Sites to the Association. Thereafter and subject to certain limitations, restrictions and conditions, the Avondale school

district ("School District") and the City of Goodyear shall have certain rights to cause dedication of all or a portion of the School and Park Sites for use as a school and/or public park, respectively, and Declarant shall have certain rights to cause reconveyance of all or a portion of the School and Park Sites for use, dedication and/or development in any lawful manner whatsoever.

Within thirty (30) days of the receipt by the Association of written notice from the School District requesting dedication of all or a portion of the School and Park Sites, the Association shall dedicate the requested property directly to the School District. Notwithstanding the foregoing, the School District must make its written request and complete acceptance of the dedication within five (5) years of the recording of the final Plat in order for the Association to have any obligation to dedicate all or any portion of the School and Park Sites to the School District. The School District may make only one (1) request for dedication, and the School District's right to notice and accept such dedication expires five (5) years from the recording of the final Plat. Declarant or its assignee shall be entitled to any and all proceeds or benefits of any kind or nature derived from the dedication including, but not limited to, any proceeds and/or tax, development or other credits or offsets.

16.1. Following the School District's acceptance of dedication or the expiration of the five (5) year period noted in the preceding paragraph, whichever is earlier, the City of Goodyear shall have the right to request dedication of any or all remaining portions of the School and Park Sites for use as a park for all members of the public including the Owners, provided such property has not been previously reconveyed to Declarant in accordance with this Article 16 and provided Declarant approves such request, in its sole and exclusive discretion, in writing. Within thirty (30) days of the receipt by the Association of timely written notice from the City of Goodyear requesting dedication of all or a portion of the remaining School and Park Sites accompanied by written approval from Declarant, the Association shall dedicate the requested property directly to the City of Goodyear. Declarant or its assignee shall be entitled to any and all proceeds or benefits of any kind or nature derived from any dedication to the City of Goodyear including, but not limited to, proceeds, and/or tax, development or other credits or offsets.

Following the School District's acceptance of dedication or the expiration of the five (5) year period noted in the second paragraph of this Article 16, whichever is earlier, Declarant shall have the right to request reconveyance to Declarant or its assignee of all or any remaining portions of the School and Park Sites for use, subsequent dedication and/or development in any lawful manner whatsoever, provided such property has not been previously dedicated to the City of Goodyear in accordance with this Article 16. Within thirty (30) days of the receipt by the Association of timely written notice from Declarant requesting reconveyance of all or a portion of the remaining School and Park Sites, the Association shall reconvey the requested property to Declarant or its designated assignee. Declarant or its assignee shall promptly donate all such reconveyed property to the Association, valued at its then current fair market value. The Association agrees to accept such donation. In the event of any subsequent dedication of the reconveyed property by the Association, Declarant shall be entitled to any and all proceeds or benefits of any kind or nature derived from such subsequent dedication and/or development of such property including, but not limited to, sales or condemnation proceeds, and tax, development or other credits or offsets.

Any property being dedicated, reconveyed or donated hereunder to or by the Association shall be free from all monetary liens or encumbrances except current real property taxes and assessments (which taxes and assessments shall be prorated as of the date of the dedication or reconveyance) and title exceptions of record that existed when Declarant originally deeded such property to the Association. For such period of time as the Association holds title to all or any portion of the School and Park Sites, the Association shall maintain said property titled in its name and all expenses related thereto shall be part of the Common Expenses.

#### **ARTICLE 17. ENFORCEMENT AND TERM**

17.1. Enforcement. The Declarant, the Association, the Architectural Committee or any Owner and their respective legal representatives, heirs, successors and assigns shall have the right (but not the obligation) to enforce, by any proceeding at law or in equity, these Covenants and Restrictions and any amendment thereto. Failure by the Association, the Architectural Committee or any Owner to enforce these Covenants and Restrictions shall in no event be deemed a waiver of the right to do so thereafter. Nothing contained herein shall obligate Association or Architectural Committee to enforce this Declaration or any particular provision herein; the Association and Architectural Committee may elect to not take action on any matters in its sole discretion. Deeds of conveyance of the Property may contain these Covenants and Restrictions by reference to this Declaration, but whether or not such reference is made in such deeds, each and all such Covenants and Restrictions shall be valid and binding upon the respective grantees. Violators of any one or more of the Covenants and Restrictions may be restrained by any court of competent jurisdiction and damages awarded against such violators, provided, however, that a violation of these Covenants and Restrictions or any one or more of them shall not affect the lien of any First Mortgage. If the Architectural Committee enforces any provision of the Project Documents, the cost of the enforcement shall be paid by the Association.

17.2. Term. This Declaration shall remain in effect for a term of forty (40) years from the date it is Recorded. After such forty (40) year period, the Declaration's term shall automatically extend for successive ten (10) year periods unless seventy-five percent (75%) of the then Owners sign and Record, within the year preceding any extension, an instrument which terminates or amends, in whole, or in part, this Declaration.

Notwithstanding any other provision of this Declaration, this Declaration shall not terminate without the consent of the City of Goodyear, Arizona for so long as such termination is prohibited by the Development Agreement, or until December 31, 2040.

Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reason of applicability of the rule against perpetuities, such provision shall expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

#### **ARTICLE 18. AMENDMENT**

18.1. By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until cessation of the Class B membership, Declarant may unilaterally amend this

Declaration for any purpose. Thereafter, Declarant, or the Board with consent of the Declarant, may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser or insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

18.2. By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the Class A votes in the Association, and the consent of Declarant, so long as Declarant owns any property subject to this Declaration.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

18.3. Validity and Effective Date. No amendment may remove, revoke or modify any right or privilege of Declarant (including, but not limited to, Declarant's reversionary rights under Article 16 in the School and Park Sites) or any right of the School District or City of Goodyear under Article 16 herein without the written consent of Declarant (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be presumed conclusively that such Owner has the authority to consent, and no contrary provision in any First Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment validly adopted by the Association shall be certified by the president or secretary of the Association, and shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its Recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Nothing in this Article shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

## **ARTICLE 19. GENERAL PROVISIONS**

19.1. Severability. Judicial invalidation of any part of these covenants and restrictions shall not affect the validity of any other provisions.

19.2. Construction. The Article and Section headings have been inserted for convenience only and shall not be considered in resolving questions of interpretation or construction. All terms and words used in this Declaration regardless of the number and gender in which they are used shall be deemed and construed to include any other number, and any other gender, as the context or sense requires.

19.3. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail, postage prepaid; if to an Owner, addressed to that Owner at the address of the Owner's Dwelling Unit or such other address as may be provided in writing to the Association by said Owner, or if to the Association or Architectural Committee, addressed to the Association or Architectural Committee at the normal business address. If notice is sent by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid. If personally delivered, notice shall be effective on receipt. Notwithstanding the foregoing, applications for approval, plans, specifications and any other communication or documents shall not be deemed to have been submitted to the Association or Architectural Committee, unless actually received by the Association or said Committee.

19.4. No Waiver. Failure by Declarant, the Association or any Owner to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws, or Association Rules in any certain instance or on any particular occasion, shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

19.5. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration shall be joint and several.

19.6. Attorneys' Fees. In the event the Association or Declarant employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with this Declaration, the Articles, Bylaws, and/or Association Rules, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees incurred in any such action.

19.7. Non-liability of Officials. To the fullest extent permitted by law, neither the Board, any committees of the Association or any member of such Board or committee shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or Persons reasonably believed to be the scope of their duties.

19.8. Gender. The singular, wherever used in this Declaration shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

19.9. Governing Law. This Declaration shall be construed in accordance with the laws of the State of Arizona.

SIGNATURES APPEAR ON FOLLOWING PAGE

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

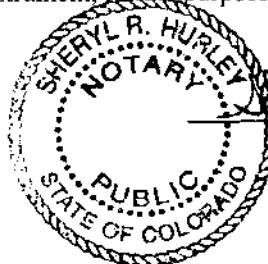
CENTERRA LLC, an Arizona limited liability company

By: Gateway American Properties, LLC, a Colorado limited liability company  
Its Manager

By: Joel H. Farkas  
Its: Manager

STATE OF Colorado )  
 ) ss.  
County of Denver )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2002, by Joel H. Farkas, manager, who acknowledged himself to be the Manager of Gateway American Properties, LLC, a Colorado limited liability company, and that he has executed the within instrument on behalf of Gateway American Properties, LLC, in his capacity as Manager of Gateway American Properties, LLC, in its capacity as a Manager of Centerra LLC, an Arizona limited liability company, the Grantor of the within instrument, for the purposes therein intended.



Cheryl R. Hurley  
Notary Public

My Commission Expires:

My Commission Expires  
June 15, 2003

**EXHIBIT A**

The property subject to the Declaration is more particularly described as:

**Lots 1 to 637, inclusive** plus/including Tracts F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD and EE as referenced in the final Plat of CENTERRA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 537 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and an Affidavit recorded in Instrument No. 01-1054755.

**EXHIBIT B**

~~The Common Areas are more particularly described as Tracts F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD and EE as referenced in the final Plat of CENTERRA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 537 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and an Affidavit recorded in Instrument No. 01-1054755.~~

## EXHIBIT C

~~The Park and School Sites are more particularly described as Tracts F and G as-referenced in the final Plat of CENTERRA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 537 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and an Affidavit recorded in Instrument No. 01-1054755.~~

**EXHIBIT D**

~~Other Property subject to annexation is more particularly described as Tracts A, B, C, and D as referenced in the final Plat of CENTERRA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 537 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and an Affidavit recorded in Instrument No. 01-1054755.~~

EXHIBIT D

**EXHIBIT "A"**

~~Lots 1 through 177, inclusive, of CENTERA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 537 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and Affidavit recorded in Instrument No. 01-1054756.~~

**EXHIBIT "A"**

~~Lots 1 through 177, inclusive, of CENTERA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 537 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and Affidavit recorded in Instrument No. 01-1054755.~~

## EXHIBIT A

The property subject to the Declaration is more particularly described as:

**Lots 1 to 637, inclusive** plus/including Tracts F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD and EE as referenced in the final Plat of CENTERRA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 553 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and an Affidavit recorded in Instrument No. 01-1054755.

**EXHIBIT B**

The Common Areas are more particularly described as Tracts F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD and EE as referenced in the final Plat of CENTERRA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 553 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and an Affidavit recorded in Instrument No. 01-1054755.

**EXHIBIT C**

The Park and School Sites are more particularly described as Tracts F and G as referenced in the final Plat of CENTERRA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 553 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and an Affidavit recorded in Instrument No. 01-1054755.

**EXHIBIT D**

Other Property subject to annexation is more particularly described as Tracts A, B, C, and D as referenced in the final Plat of CENTERRA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 553 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and an Affidavit recorded in Instrument No. 01-1054755.

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20031283308 09/12/2003 12:26  
ELECTRONIC RECORDING

RECORDING REQUESTED BY:  
Chicago Title Insurance Company  
2415 E. Camelback Road, Suite 300  
Phoenix, AZ 85016

2319287-4-5-5--  
leonardil

WHEN RECORDED, MAIL TO:

Mark P. Goss, Esq.  
BRYAN CAVE, LLP  
Two North Central Ave., Suite 2200  
Phoenix, AZ 85004-4406

4/17/2003 [Signature]

20031283308-45  
**NOTICE OF APPROVAL OF BUILDER  
UNDER  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CENTERRA SINGLE-FAMILY DETACHED**

THIS NOTICE OF APPROVAL of Builder under Declaration of Covenants, Conditions and Restrictions for Centerra Single-Family Detached (the "Notice of Approval") is made this 9 day of September, 2003 by Centerra LLC, an Arizona limited liability company ("Declarant").

**WITNESSETH**

WHEREAS, Declarant is the owner of certain real property ("Property") located in the City of Goodyear, Maricopa County, Arizona, described as follows:

SEE ATTACHED EXHIBIT "A"; and

WHEREAS, Declarant recorded that a certain Declaration of Covenants, Conditions and Restrictions as Recording No. 2002-790569, as re-recorded under Recorded No. 2002-133761, as amended (the "Declaration"); and

WHEREAS, pursuant to Section 1.9 of the Declaration, Declarant has the unilateral right to approve an entity as a "Builder" under the Declaration; and

WHEREAS, Declarant desires to record this Notice of Approval pursuant to the terms of the Declaration for the purpose of designating Standard Pacific of Arizona, Inc. as a "Builder" under the Declaration.

NOW, THEREFORE, Declarant hereby declares as follows:

1. **DEFINITIONS.**

426511.1/120016

All capitalized terms used and not otherwise defined in this Notice, shall have the same meanings as ascribed to such terms as are contained in the Declaration.

2. **DESIGNATION OF BUILDER.** Subject to the terms and conditions of the Declaration, Declarant hereby approves Standard Pacific of Arizona, Inc., a Delaware corporation ("Standard Pacific"), as a "Builder" under the Declaration but such designation applies only to that certain real property as described in Exhibit "B" attached hereto and incorporated herein ("Standard Pacific Property"). Declarant's approval is expressly conditioned upon Standard Pacific's obligation to contribute toward the Common Expenses attributable to the Lots as set forth in the Declaration.

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

**CENTERRA LLC**, an Arizona limited liability company

By: Gateway American Properties, LLC,  
a Colorado limited liability company  
Its Manager

By: Joel H. Farkas  
Joel H. Farkas, Manager

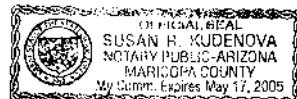
STATE OF ARIZONA      )  
                            )  
                            ) ss.  
County of Maricopa      )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of September, 2003, by Joel H. Farkas, the Manager of Gateway American Properties, LLC, a Colorado limited liability company, as Manager of Centerra LLC, an Arizona limited liability company, on behalf of the limited liability company.

Susan R. Kudanova  
Notary Public

My Commission Expires:

5/17/05



**EXHIBIT A**

The property subject to the Declaration is more particularly described as:

**Lots 1 to 637, inclusive** plus/including Tracts F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD and EE as referenced in the final Plat of CENTERRA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 553 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and an Affidavit recorded in Instrument No. 01-1054755.

4263114/126018

**EXHIBIT B**

Standard Pacific Property

Lots 178 through 434, inclusive, of CENTERRA, according to the final plat recorded in Book 553 of Maps, Page 37, official records of Maricopa County, Arizona, as amended by that certain Affidavit recorded at Document No. 2001-0177542, official records of Maricopa County, Arizona.

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20040692481 06/18/2004 08:27  
ELECTRONIC RECORDING

When recorded return to:

Standard Pacific of Arizona, Inc.  
6710 N. Scottsdale Road  
Suite 150  
Scottsdale, AZ 85253  
Attn: Connie Dean

3367-28-1-1--  
Tomutac

**TRACT DECLARATION AND DECLARATION OF FURTHER COVENANTS,  
CONDITIONS AND RESTRICTIONS**

THIS TRACT DECLARATION AND DECLARATION OF FURTHER COVENANTS, CONDITIONS AND RESTRICTIONS ("Tract Declaration") is made as of the 22nd day of June, 2004 by Standard Pacific of Arizona, Inc., a Delaware corporation ("Tract Declarant").

RECITALS

A. Tract Declarant owns the real property located in Maricopa County, Arizona, that is described on Exhibit "A" attached hereto ("Tract"). The Tract is subject to that certain Declaration of Covenants, Conditions and Restrictions for Centerra Single-Family Detached, recorded as Document No. 2002-0790569 and re-recorded as Document No. 2002-1333761 of the official records of Maricopa County, Arizona and as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Centerra Single-Family Detached, recorded as Document No. 2003-1216646 of the official records of Maricopa County, Arizona (collectively, "Master Declaration").

B. Tract Declarant desires to record this Tract Declaration over the Tract.

NOW, THEREFORE, Tract Declarant hereby declares that the Tract shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, which shall run with the Tract and which shall be binding on all parties having any right, title or interest in said Tract or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

1. Definitions.

(a) "ADR Provisions" means the Alternative Dispute Resolution Provisions attached hereto as Exhibit "C".

(b) "Dwelling Unit" means any building or structure situated upon one (1) Lot and which is intended for use and occupancy as a detached residence for a single family.

(c) "Lot" means a portion of the Tract, whether improved or unimproved, which may be independently owned and conveyed and on which one (1) Dwelling Unit is intended for development, use and occupancy. The term shall refer to the land, if any, which is part of the Lot as well as any Improvements, including any Dwelling Unit, thereon. The boundaries of each Lot shall be delineated on a Plat.

PHX/GPERRY/1552600.2/87539.070

(d) "Owner" or "Owners" shall mean one or more Persons who hold the record title to any Lot or portion thereof, including without limitation, one who is buying a Lot under a Recorded agreement of sale, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. In the case of a Lot wherein the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor. In the case of a Lot, the fee simple title to which is vested in a trustee pursuant to a trust agreement, the beneficiary entitled to possession shall be deemed to be the Owner. Each builder is deemed an Owner for purposes of this Declaration.

(e) "Person" shall mean a human being, a corporation, a partnership, a trustee, a limited liability company, or any other legal entity.

(f) "Plat" means a recorded engineering survey or other surveys for all or a portion of the Tract, as amended and supplemented.

(g) "Retail Purchaser" means a Person who in a retail transaction purchases a Lot on which a completed Dwelling Unit has been constructed. The term "Retail Purchaser" shall not include a Person who purchases such a Lot and simultaneously with such purchase leases such Lot and the Dwelling Unit thereon back to Tract Declarant or any Tract Declarant Affiliate for use as a model home, for so long as the Dwelling Unit continues to be used for marketing rather than residential purposes.

(h) "Single Family" means a group of Persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household.

(i) "Tract Declarant Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with Tract Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Tract Declarant (or another Tract Declarant Affiliate) is a general partner, managing member or controlling shareholder.

2. Home Warranty. Tract Declarant presently intends, but shall not have any obligation whatsoever, to extend to every original Retail Purchaser who purchases a Dwelling Unit in the Tract from Tract Declarant a Home Builder's Limited Warranty ("Home Warranty") in substantially the form attached hereto as Exhibit "B". If Tract Declarant extends a Home Warranty to such original Retail Purchaser, a copy of the form of the Home Warranty issued for the particular Dwelling Unit or Lot will be available from Professional Warranty Service Corporation, P. O. Box 800, Annandale, Virginia 22003-0800, or its successors in interest. Every such original Retail Purchaser and every successive Owner of such original Retail Purchaser's Dwelling Unit or Lot shall be bound by and a beneficiary of: (a) the Home Warranty (but only to the extent such a Home Warranty is actually issued and in effect at the time of the particular claim and with respect to the particular Dwelling Unit or Lot at issue); and (b) the ADR Provisions (including the waiver of jury trial). Notwithstanding any other provision of this Tract Declaration (including attached Exhibits), the provisions of the Home Warranty, including, without limitation, the binding arbitration procedures and its limitation of statutory and common

law remedies described therein, and the ADR Provisions shall control with respect to every dispute with Tract Declarant related to or arising out of the Dwelling Unit or the Lot on which it is situated. SAID LIMITED WARRANTY, WHEN ISSUED, SHALL BE THE ONLY WARRANTY, EXPRESS OR IMPLIED, MADE BY TRACT DECLARANT WITH REGARD TO THE LOTS, AND TRACT DECLARANT DISCLAIMS ALL OTHER WARRANTIES AS MORE FULLY SET FORTH IN EXHIBIT "D" TO THIS TRACT DECLARATION. This Section shall not be amended without the written consent of Tract Declarant.

3. Disputes with Tract Declarant. The following dispute resolution procedure is implemented for the Tract in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Sections 1-16), which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. The dispute resolution procedure in this Section is to be interpreted and enforced as authorized by the Federal Arbitration Act. Parties interpreting this Section shall follow the federal court rulings which provide, without limitation, that the Federal Arbitration Act (a) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding substantive or procedural state policies to the contrary, (b) requires that federal and state courts rigorously enforce agreements to arbitrate, (c) requires the scope of this alternative dispute resolution agreement be interpreted broadly in favor of arbitration, and (d) requires disputes over whether an issue is arbitrable be resolved by a finding in favor of arbitration. Specifically, this Section is to be interpreted in accordance with Allied-Bruce Terminix Companies, Inc. v. Dobson, 115 S.Ct. 834 (1995), and other federal court rulings.

(a) Alternative Dispute Resolution Provisions. Any Dispute (as defined in the ADR Provisions) shall be governed by and resolved in accordance with the ADR Provisions.

(b) Tract Declarant Party. This Section 3 governs the resolution of Disputes with Tract Declarant parties on the one hand, and one or more Owner/subsequent Owner, on the other hand. Except as otherwise provided in the ADR Provisions, each party in a Dispute with Tract Declarant shall bear its own attorneys' fees and costs, and the prevailing party shall not be entitled to an award of attorneys' fees or costs.

(c) AGREEMENT TO METHOD OF RESOLVING DISPUTES; WAIVER OF RIGHT TO JURY TRIAL; AMENDMENT. TRACT DECLARANT AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 3 TO RESOLVE ALL DISPUTES WITH REGARD TO THE TRACT AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. TRACT DECLARANT, AND EACH OWNER OF LOTS IN THE TRACT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 3, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT.

4. Amendment. This Tract Declaration may only be amended by the Tract Declarant. Notwithstanding anything to the contrary, the provisions of this Tract Declaration are intended to benefit and bind Tract Declarant regardless of whether Tract Declarant owns any portion of the Tract after the date hereof.

5. Relationship to Master Declaration. In the event of any conflict between a provision of the Master Declaration and a provision of this Tract Declaration, the provision in the Master Declaration shall control; provided, however, the dispute resolution procedures of this Tract Declaration shall be used in lieu of those contained in the Master Declaration for all disputes among Persons bound by this Tract Declaration with respect to a Lot or Dwelling Unit located on the Tract..

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

STANDARD PACIFIC OF ARIZONA,  
INC., a Delaware corporation

By: Bruce Schroeder  
Name: Bruce Schroeder  
Title: Vice President

By: Robert S. Downing  
Name: Robert S. Downing  
Title: Vice President

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 2004, by Bruce Schroeder, the Vice President of Standard Pacific of Arizona, Inc., a Delaware corporation, on behalf thereof.

Connie S. Dean  
Notary Public



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 2004, by Robert S. Downing, the Vice President of Standard Pacific of Arizona, Inc., a Delaware corporation, on behalf thereof.

Connie S. Dean  
Notary Public



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE TRACT**

Lots 178 through 434, inclusive, of Centerra, according to the Plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 553 of Maps, page 37.

PHX/GPERRY/1552600.2/87539.070

**EXHIBIT "B"**

**HOME WARRANTY**

PHX/GPERRY/1552600.2/87539.070

## HOME BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation

Throughout this HOME BUILDER'S LIMITED WARRANTY, referred to hereinafter as the "LIMITED WARRANTY", the words "YOU" and "YOUR" refer to the HOMEOWNER and HOMEOWNERS ASSOCIATION. The words "WE", "US" and "OUR" refer to the BUILDER. The other words and phrases which appear in boldface uppercase type also have special meaning. Refer to the Section X. Definitions, so that YOU will understand the terminology applicable to this LIMITED WARRANTY.

This LIMITED WARRANTY establishes an agreed method for determining when a CONSTRUCTION DEFECT exists and a clear understanding of OUR responsibilities for remedying any such CONSTRUCTION DEFECT. This LIMITED WARRANTY also helps distinguish a CONSTRUCTION DEFECT that is OUR responsibility from those minor imperfections that can reasonably be expected in a HOME or the COMMON ELEMENTS or result from normal wear and tear or are routine HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance responsibilities.

This LIMITED WARRANTY contains the procedures YOU must use to notify US of a condition in YOUR HOME or the COMMON ELEMENTS, which YOU believe may constitute a CONSTRUCTION DEFECT. In the event a condition occurs in the HOME or the COMMON ELEMENTS that YOU believe may constitute a CONSTRUCTION DEFECT, YOU agree to submit any request for warranty performance under this LIMITED WARRANTY. Based on the information YOU provide, and where WE deem it necessary information obtained from OUR onsite investigation inspection and/or testing of the HOME or the COMMON ELEMENTS, WE will determine whether WE agree with YOU that the condition constitutes a CONSTRUCTION DEFECT. If WE determine that the condition reported by YOU is a CONSTRUCTION DEFECT, WE will remedy the condition in accordance with the remedies prescribed in this LIMITED WARRANTY. WE will make this determination in accordance with Section III, OUR Coverage Obligations, contained in this LIMITED WARRANTY.

If WE determine that a condition does not constitute a CONSTRUCTION DEFECT that is OUR responsibility and therefore deny YOUR request for warranty performance, YOU have the right to initiate binding arbitration that will irrevocably determine whether the condition constitutes a CONSTRUCTION DEFECT that is OUR responsibility. If this binding arbitration determines that the condition does constitute a CONSTRUCTION DEFECT that is OUR responsibility, WE will resolve the problem in accordance with the remedies prescribed in this LIMITED WARRANTY. The arbitrator will make a determination based on the language contained in Section III, OUR Coverage Obligations.

Enclosed with this LIMITED WARRANTY is a Limited Warranty Validation Form. The Limited Warranty Validation Form provides the dates on which the warranty coverage period begins and expires. It is important that this form is retained with the LIMITED WARRANTY. Liability under this LIMITED WARRANTY is limited to the amount shown on the Limited Warranty Validation Form.

All express or implied warranties other than this LIMITED WARRANTY, including any oral or written statement or representation made by US or any other person, and any implied warranty of habitability, merchantability or fitness, are hereby disclaimed by US and are waived by YOU. In addition, YOU waive the right to seek damages or other legal or equitable remedies from US, OUR subcontractors, agents, vendors, suppliers, design professionals and materialmen, under any other common law or statutory theory of liability, including but not limited to negligence and strict liability. YOUR only remedy in the event of a CONSTRUCTION DEFECT in or to the HOME or the COMMON ELEMENTS or to the real property on which the HOME or the COMMON ELEMENTS is situated is the coverage provided to YOU under this LIMITED WARRANTY. There may be instances where an additional PWC administered Builder's Limited Warranty is issued together with this LIMITED WARRANTY. If both of these warranties are issued to YOU, YOU agree to request warranty performance under either warranty relative to warrantable issues on the HOME or the COMMON ELEMENTS. YOU may not collect twice relative to the same defect and amounts paid or expended by US for warranty

performance under either warranty will reduce the limit of liability remaining under both warranties simultaneously.

WE have contracted with PWC for certain administrative services relative to this **LIMITED WARRANTY**. PWC's sole responsibility is to provide administrative services. Under no circumstances or conditions is PWC responsible for fulfilling **OUR** obligations under this **LIMITED WARRANTY**.

If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.

## I. Coverage Limit

The amount shown on the Limited Warranty Validation Form is **OUR** limit of liability. It is the most WE will pay or expend for all covered **CONSTRUCTION DEFECTS** regardless of the number of requests for warranty performance made against this **LIMITED WARRANTY**. Once **OUR** limit of liability has been paid, no further requests for warranty performance can be made against this **LIMITED WARRANTY** or any other PWC administered Builder's Limited Warranty issued for the **HOME** or the **COMMON ELEMENTS**.

## II. Warranty Coverage

Coverage Under this **LIMITED WARRANTY** is expressly limited to **CONSTRUCTION DEFECTS** which occur during the **WARRANTY PERIOD** indicated on the Limited Warranty Validation Form and are reported by **YOU** in accordance with the notification requirements of Section VII, **Procedure to Request US To Perform Under This LIMITED WARRANTY**.

<b>Coverage</b>	During the <b>WARRANTY PERIOD</b> indicated on the Limited Warranty Validation Form that is attached to and made part of this <b>LIMITED WARRANTY</b> , WE warrant the <b>HOME</b> and the <b>COMMON ELEMENTS</b> will be free of <b>CONSTRUCTION DEFECTS</b> . To be eligible for coverage WE must receive written notice from <b>YOU</b> of the alleged <b>CONSTRUCTION DEFECT</b> as soon as it is reasonably possible after <b>YOU</b> have become aware or should have become aware of a <b>CONSTRUCTION DEFECT</b> but in no event later than thirty (30) days after the expiration of the coverage.
-----------------	--

## III. OUR Coverage Obligations

All notices of alleged **CONSTRUCTION DEFECTS**, and complaints under this **LIMITED WARRANTY** must be made by **YOU** in writing. Telephonic or face-to-face discussion will not protect **YOUR** rights under this **LIMITED WARRANTY** (see Section VII, **Procedure to Request US To Perform Under This LIMITED WARRANTY**).

In the event **YOU** allege a **CONSTRUCTION DEFECT** occurs during the **WARRANTY PERIOD**, upon receiving written notice from **YOU**, WE, or a third party designated by US or acting on **OUR** behalf, will inspect, investigate and/or test (including destructive testing) the alleged **CONSTRUCTION DEFECT** to determine if a **CONSTRUCTION DEFECT** exists. Upon confirmation of a **CONSTRUCTION DEFECT**, WE, or a third party designated by US or acting on **OUR** behalf, will (1) repair or replace the **CONSTRUCTION DEFECT**, (2) pay

to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT** or (3) **PAY** to **YOU** an amount equal to the diminution in fair market value caused by the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** authorized representative's sole option.

**WE** will have been considered to have breached this **LIMITED WARRANTY** only if **WE** fail to resolve a **CONSTRUCTION DEFECT** in accordance with the terms and conditions of this **LIMITED WARRANTY**.

**A. Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined**

In the event **YOU** believe that a flaw in the **HOME** or the **COMMON ELEMENTS** constitutes a **CONSTRUCTION DEFECT**, the following factors will be considered by **US** in determining whether the condition constitutes a **CONSTRUCTION DEFECT**. Should either **YOU** or **WE** elect to initiate binding arbitration, these factors will be considered by the arbitrator in rendering a decision:

1. Any performance standards or guidelines or other documents or manuals that contain **OUR** building standards, that were provided to **YOU** at or prior to closing on the **HOME**, or in the case of the **HOMEOWNERS ASSOCIATION**, prior to transferring title to all the **COMMON ELEMENTS**. Absent such standards, the Residential Construction Performance Guidelines published by the National Association of Home Builders, in effect at the time of closing on the **HOME**, or in the case of the **HOMEOWNERS ASSOCIATION**, at the time of transferring title to all the **COMMON ELEMENTS** shall apply. Absent a specific standard in the documents identified above, building practices and standards in use in the region of the country in which the **HOME** or the **COMMON ELEMENTS** are located shall apply;
2. Consideration as to whether the magnitude of the flaw or imperfection:
  - materially affects the structural integrity of the **HOME** or **COMMON ELEMENTS**; or
  - has an obvious and material negative impact on the appearance of the **HOME** or **COMMON ELEMENTS**; or
  - jeopardizes the life or safety of the occupants; or
  - results in the inability of the **HOME** or the applicable **COMMON ELEMENTS** to provide the functions that can reasonably be expected in such a **HOME** or **COMMON ELEMENT**.
3. Consideration as to whether a condition is the result of normal wear and tear (conditions that are normal wear and tear, or are caused by normal wear and tear are not **CONSTRUCTION DEFECTS**);
4. Consideration as to whether the condition was caused by, or in any way resulted from, the failure of the **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** to perform normal or routine maintenance (any condition that is determined to be a **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** maintenance issue, or any condition that results from improper or inadequate **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** maintenance, is not a **CONSTRUCTION DEFECT**);
5. Consideration as to whether the condition was caused by the **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** or their representatives, other than **US**, after the **HOMEOWNER** took possession of the **HOME** or the **COMMON ELEMENTS** (**WE** and **YOU** conducted a walk through inspection just prior to closing on the **HOME**. Damage that was caused by **YOU** or **YOUR** representatives is not a **CONSTRUCTION DEFECT**, for example, a large, visible scratch on marble tile in the entry foyer that was not noted in the walk through inspection, but was reported after furniture was moved into the **HOME**, will not be considered a **CONSTRUCTION DEFECT**);

6. Recognition that any condition resulting directly or indirectly from or worsened by changes, additions, alterations or other actions or omissions by the **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** or their agents, other than **US**, will not be considered a **CONSTRUCTION DEFECT** (this includes changes to the topography, drainage or grade of the property);
7. Any Exclusions contained in this **LIMITED WARRANTY**.

## IV. Homeowner Maintenance Obligations

Maintenance of the **HOME** and the **COMMON ELEMENTS** is **YOUR** responsibility. All homes and common elements require periodic maintenance to prevent premature deterioration, water intrusion and to ensure adequate performance of the **SYSTEMS**. **WE** will make a "Homeowner Maintenance Manual" or similar publication available to **YOU** upon request. Whether from this document or others that are readily available to **YOU**, **YOU** must understand and perform the maintenance that the **HOME** and **COMMON ELEMENTS** require. As stated in other sections of this **LIMITED WARRANTY**, **WE** are not responsible for **HOME** or **COMMON ELEMENTS** maintenance issues or for damage that results from **YOUR** failure to maintain the **HOME** or the **COMMON ELEMENTS**.

## V. Coverage Limitations

When **WE** or a third party designated by **US** or acting on **OUR** behalf, repair or replace a **CONSTRUCTION DEFECT** the repair or replacement will include the repair or replacement of only those surfaces, finishes and coverings that were damaged by the **CONSTRUCTION DEFECT** that were part of the **HOME** or the **COMMON ELEMENTS** when title was first transferred by **US**. Surfaces, finishes and coverings that require repair or replacement in order for **US** or a third party designated by **US** to repair or replace **CONSTRUCTION DEFECTS** will be repaired or replaced. The extent of the repair and replacement of these surfaces, finishes or coverings will be to approximately the same condition they were in prior to the **CONSTRUCTION DEFECT**, but not necessarily to a like new condition.

When repairing or replacing surfaces, finishes and coverings, the repair or replacement will attempt to achieve as close a match with the original surrounding areas as is reasonably possible, but an exact match cannot be guaranteed due to such factors as fading, aging and unavailability of the same materials.

In the case where a **CONSTRUCTION DEFECT** exists and the **HOME** is rendered uninhabitable and the **CONSTRUCTION DEFECT** is repaired or replaced, the repair or replacement shall include the reasonable cost of the **HOMEOWNER'S** alternative shelter until the **HOME** is made habitable.

## VI. Exclusions

- A. This **LIMITED WARRANTY** does not cover:

1. Any **CONSTRUCTION DEFECTS** or other damages resulting, either directly or indirectly, from the following causes or occurring in the following situations:
  - a. Fire;
  - b. Lightning;
  - c. Explosion;
  - d. Riot and Civil Commotion;
  - e. Smoke;
  - f. Hull;
  - g. Aircraft;
  - h. Falling Objects;
  - i. Vehicles;
  - j. Floods;
  - k. Earthquake;
  - l. Landslide or mudslide originating on property other than the site of the **HOME** or the **COMMON ELEMENTS** or other property developed by the **BUILDER**;
  - m. Mine subsidence or sinkholes;
  - n. Changes in the underground water table not reasonably foreseeable by the **BUILDER**;
  - o. Volcanic eruption; explosion or effusion;
  - p. Wind including:
    - (i). Gale force winds;
    - (ii). Hurricanes;
    - (iii). Tropical storms;
    - (iv). Tornadoes;
  - q. Insects, animals or vermin;
  - r. Changes of the grading of the ground by anyone other than **US** or **OUR** agents, or subcontractors which results in surface drainage towards the **HOME** or other improper drainage or permits water to pond or become trapped in localized areas against the foundation or otherwise;
  - s. Changes, additions, or alterations made to the **HOME** or the **COMMON ELEMENTS** by anyone after the **WARRANTY PERIOD** begins, except those made or authorized by **US**;
  - t. Any defect in material or workmanship supplied by anyone other than **US** or **OUR** agents, or subcontractors;
  - u. Improper maintenance, negligence or improper use of the **HOME** or the **COMMON ELEMENTS** by **YOU** or anyone other than **US** that results in rot, dry rot, moisture, rust, mildew or any other damage;
  - v. Dampness or condensation due to **YOUR** failure to maintain adequate ventilation;
  - w. Damage resulting from the weight and/or performance of any type of waterbed or other furnishings which exceeds the load-bearing design of the **HOME** or the **COMMON ELEMENTS**;
  - x. Normal wear and tear or normal deterioration of materials;
  - v. Economic damages due to the **HOME'S** or the **COMMON ELEMENTS'** failure to meet consumer expectations.
2. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**. **WE** will not cover costs or expenses arising from the uninhabitability of the **HOME** or the **COMMON ELEMENTS** or health risk due to the proximity of **POLLUTANTS**. **WE** will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor **POLLUTANTS**;

3. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the effects of electromagnetic fields (EMF's) or radiation;
4. Any damage to personal property that does not result from a **CONSTRUCTION DEFECT**;
5. Any "**CONSEQUENTIAL OR INCIDENTAL DAMAGES**";
6. Any damage to **CONSUMER PRODUCTS**;
7. Any **CONSTRUCTION DEFECT** as to which **YOU** have not taken timely and reasonable steps to protect and minimize damage after **WE** or **OUR** authorized representative have provided **YOU** with authorization to prevent further damage;
8. Any damage to the extent it is incurred after or as a result of **YOUR** failure to notify **US** in a reasonably timely manner after **YOU** have become aware or should have become aware of the **CONSTRUCTION DEFECT** or condition causing such damage;
9. Any costs or obligations paid or incurred by **YOU** in violation of Section VII. C. below;
10. Any non-conformity with local building codes, regulations or requirements that has not resulted in a **CONSTRUCTION DEFECT**. While **WE** acknowledge **OUR** responsibility to build in accordance with applicable building codes, this **LIMITED WARRANTY** does not cover building code violations in the absence of a **CONSTRUCTION DEFECT**;
11. Any deviation from plans and specifications that has not resulted in a **CONSTRUCTION DEFECT**.

B. **OUR LIMITED WARRANTY** does not cover any **CONSTRUCTION DEFECT** which would not have occurred in the absence of one or more of the excluded events or conditions listed in Exclusions, Section VI. A.1 a. – A.1.c., A.2. or A.3. above, regardless of:

1. the cause of the excluded event or condition; or
2. other causes of the loss or damage; or
3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

## **VII. Procedure to Request US To Perform Under This LIMITED WARRANTY**

If **YOU** become aware of a condition that **YOU** believe is a **CONSTRUCTION DEFECT** under this **LIMITED WARRANTY**, **YOU** have the following responsibilities:

### **A. Notification**

**YOU** must notify **US** in writing as soon as it is reasonably possible after **YOU** have become aware or should have become aware of a **CONSTRUCTION DEFECT**, but in no event may **YOUR** written notice of a **CONSTRUCTION DEFECT** or **YOUR** written request for warranty performance be postmarked or received by **US** later than thirty (30) days after this **LIMITED WARRANTY** has expired.

If the written notice is postmarked or received by **US** more than thirty (30) days after the expiration of this **LIMITED WARRANTY**, **WE** shall have no obligation to remedy the **CONSTRUCTION DEFECT**. In order to

establish a record of timely notification, WE recommend that written notice should always be sent by Certified Mail, return receipt requested.

#### **B. Cooperate With US**

YOU must give US and any third parties acting on OUR behalf reasonable help in inspecting, investigating, testing (including destructive testing), monitoring, repairing, replacing or otherwise correcting an alleged **CONSTRUCTION DEFECT**. Help includes, but is not limited to, granting reasonable access to the **HOME** or **COMMON ELEMENTS** for the forgoing purposes. If YOU fail to cooperate or provide such reasonable access to the **HOME** or **COMMON ELEMENTS**, WE will have no obligation to do any of the foregoing.

#### **C. Do Not Make Voluntary Payments**

YOU agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition YOU believe is a **CONSTRUCTION DEFECT** without prior written approval from US, or other parties authorized to act on OUR behalf. WE will not reimburse YOU for costs incurred where YOU did not obtain prior written approval.

However, YOU may incur reasonable expenses in making repairs in an **EMERGENCY CONDITION** without prior written approval, provided the repairs are solely for the protection of the **HOME** or **COMMON ELEMENTS** from further damage or to prevent an unsafe living condition and provided YOU notify US as soon as is reasonably possible. To obtain reimbursement for repairs made during an **EMERGENCY CONDITION**, YOU must provide US with an accurate written record of the repair costs.

#### **D. Sign A Release**

When WE or a third party designated by US or acting on OUR behalf have completed repairing, replacing or paying YOU as to any **CONSTRUCTION DEFECTS** or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**, YOU must sign a full release of OUR obligation for the **CONSTRUCTION DEFECTS**. The release shall be applicable to the **CONSTRUCTION DEFECTS** and shall not prevent YOU from notifying US should YOU become aware of a subsequent **CONSTRUCTION DEFECT**.

#### **E. If YOU Disagree With US**

If YOU believe WE have not responded to YOUR request for warranty performance to YOUR satisfaction or in a manner that YOU believe this **LIMITED WARRANTY** requires, YOU may provide written notice to PWC requesting Mediation. Upon PWC's receipt of written notice from YOU, PWC may review and mediate YOUR request by communicating with YOU, US, and any other individuals or entities that PWC believes may possess relevant information. If after forty-five (45) days, PWC is unable to successfully mediate YOUR request for warranty performance, or at any earlier time when PWC determines that YOU and WE are at an impasse, PWC will notify YOU that YOUR request for warranty performance remains unresolved and that YOU may elect to initiate Binding Arbitration. Binding Arbitration as described in the following section is the sole remedy for the resolution of disputes between YOU and US as set forth in the following section.

## **VIII. Binding Arbitration Procedure**

Any disputes between YOU and US, or parties acting on OUR behalf, including PWC, related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS** will be resolved by binding arbitration. Binding arbitration shall be the sole remedy for resolving any and all disputes between YOU and US, or OUR representatives. Disputes subject to binding arbitration include, but are not limited to:

- A. Any disagreement that a condition in the HOME or the COMMON ELEMENTS is a CONSTRUCTION DEFECT and is therefore covered by this LIMITED WARRANTY;
- B. Any disagreement as to whether a CONSTRUCTION DEFECT has been corrected in compliance with this LIMITED WARRANTY;
- C. Any alleged breach of this LIMITED WARRANTY;
- D. Any alleged violation of consumer protection, unfair trade practice, or any other statute;
- E. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and any other claims arising in equity or from common law;
- F. Any dispute concerning the issues that should be submitted to binding arbitration;
- G. Any dispute concerning the timeliness of OUR performance and/or YOUR notifications under this LIMITED WARRANTY;
- H. Any dispute as to the payment or reimbursement of the arbitration filing fee;
- I. Any dispute as to whether this LIMITED WARRANTY, or any provision hereof, including, but not limited to any waiver hereunder, is unenforceable;
- J. Any other claim arising out of or relating to the sale, design or construction of YOUR HOME or the COMMON ELEMENTS, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by this LIMITED WARRANTY.

The arbitration shall be conducted by Construction Arbitration Services, Inc., or such other reputable arbitration service that PWC shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization, that are in effect at the time the request for arbitration is submitted, will be followed. A copy of the applicable rules and procedures will be delivered to YOU upon request.

This arbitration agreement shall be governed by the United States Arbitration Act (9 U.S.C. §§ 1 – 16) to the exclusion of any inconsistent state law, regulation or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between YOU and US. This filing fee shall be no more than the amount charged by the arbitration service to PWC for each arbitration. Contact PWC to determine the arbitration filing fee in effect at the time an arbitration is being requested. The arbitrator shall, as part of any decision, award to the party prevailing at the arbitration any applicable filing fees or other arbitration fees paid by that party.

The process for YOU to initiate arbitration is described below.

**Step 1** YOU complete a Binding Arbitration Request Form and mail it to PWC along with the appropriate arbitration filing fee. A Binding Arbitration Request Form is attached to this LIMITED WARRANTY. YOUR Binding Arbitration Request Form must be received no later than ninety (90) days after this LIMITED WARRANTY expires. YOU must still notify US of an alleged CONSTRUCTION DEFECT as soon as it is reasonably possible after YOU have become aware or should have become aware of the CONSTRUCTION DEFECT, but in no event later than thirty (30) days after expiration of this LIMITED

**WARRANTY.** Please Note that while **YOU** have thirty (30) days after this **LIMITED WARRANTY** expires to notify **US** and ninety (90) days after it expires to file for arbitration, this time period does not extend the **WARRANTY PERIOD** for **CONSTRUCTION DEFECTS**. Additionally, no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by **US** under this **LIMITED WARRANTY**, nor any dispute resolution efforts, shall extend the term of this **LIMITED WARRANTY** or extend or toll any statutes of limitations or any of **YOUR** rights or remedies.

**Step 2 PWC Will Arrange the Arbitration Proceeding.** The arbitrator or arbitration organization will notify **YOU** of the time, date and location of the arbitration hearing. Most often the hearing will be conducted at the **HOME** or the **COMMON ELEMENTS** or some other location that is agreeable to all the parties to the dispute. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.

**Step 3 The Arbitration Hearing.** The parties at the arbitration hearing will include the arbitrator, **YOU**, **US** and/or a third party designated by **US** or acting on **OUR** behalf. Any party to the proceeding may be represented at the hearing. All persons who are parties to the arbitration, as well as representatives and witnesses, are entitled to attend hearings.

After evidence is presented by **YOU**, **US** or **OUR** representatives, a decision will be rendered by the arbitrator. The decision is final and binding on **YOU** and **US**. The arbitrator first will determine whether any claimed or alleged **CONSTRUCTION DEFECT** exists and whether it is **OUR** responsibility. Second, if the arbitrator finds **US** responsible for a **CONSTRUCTION DEFECT**, the arbitrator will determine the scope of any repair or replacement, **OUR** cost of any such repair or replacement, and the diminution in fair market value, if any, caused by such **CONSTRUCTION DEFECT**. Based upon the arbitrator's decision, **WE** shall choose whether **WE** shall (1) repair, replace the **CONSTRUCTION DEFECT**, (2) pay to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT** or (3) PAY to **YOU** an amount equal to the diminution in fair market value caused by the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** authorized representative's sole option. In addition, the arbitrator shall render a decision resolving any other disputed matters or issues related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS**.

**Step 4 OUR Arbitration Performance Obligations.** **WE** will comply with the arbitrator's decision no later than 60 days from the date of the award or other such date as may be specified or allowed in the decision. However, delays caused by circumstances beyond **OUR** or **OUR** representative's control shall be excused.

**Step 5. If YOU believe WE Have Failed To Comply With The Award.** **YOU** should contact **PWC** at its mailing address specified in this **LIMITED WARRANTY** if **YOU** believe **WE** have not complied with the arbitrator's award. **PWC** will mediate this dispute and if it cannot be resolved, will advise **YOU** that a compliance inspection arbitration is available to determine whether **WE** have performed adequately under the original arbitration award. **PWC** will communicate these findings to both **US** and **YOU**. If it is determined that **WE** have not properly performed, **WE** will be obligated to immediately comply.

**PWC's sole responsibility is to administer this LIMITED WARRANTY on OUR behalf and as such PWC assumes no other liabilities in connection with this LIMITED WARRANTY. Under no condition or circumstance is PWC responsible for fulfilling any of OUR obligations under this LIMITED WARRANTY.**

## IX. General Conditions

### A. Separation of This LIMITED WARRANTY From The Contract Of Sale

This **LIMITED WARRANTY** is separate and independent of the contract between **YOU** and **US** for the construction and/or sale of the **HOME** or transfer of the **COMMON ELEMENTS**. The provisions of this

**LIMITED WARRANTY** shall in no way be restricted or expanded by anything contained in the construction and/or sales contract or other documents between **YOU** and **US**.

**B. Transfer to Subsequent HOMEOWNERS**

This **LIMITED WARRANTY** will transfer to new owners of the **HOME** for the remainder of the **WARRANTY PERIOD**. **YOU** agree to provide this **LIMITED WARRANTY** to any subsequent purchaser of the **HOME** as a part of the contract of sale of the **HOME**. **OUR** duties under this **LIMITED WARRANTY** to the new **HOMEOWNER** will not exceed the limit of liability then remaining, if any.

**C. Transfer of Manufacturer's Warranties**

**WE** assign to **YOU** all the manufacturer's warranties on all appliances, fixtures and items of equipment that **WE** installed in the **HOME**. Should an appliance or item of equipment malfunction **YOU** must follow the procedures set forth in that manufacturer's warranty to correct the problem. **OUR** obligation under this **LIMITED WARRANTY** is limited to the workmanlike installation of such appliances and equipment. **WE** have no obligation for appliances and equipment defined as **CONSUMER PRODUCTS**.

**D. Recovery Rights**

If **WE** or a third party designated by **US** or acting on **OUR** behalf repairs, replaces or pays **YOU** as to a **CONSTRUCTION DEFECT**, or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**, **WE** are entitled, to the extent of **OUR** payment, to take over **YOUR** related rights of recovery from other people and organizations, including but not limited to, other warranties and insurance. **YOU** have an obligation not to make it harder for **US** to enforce these rights. **YOU** agree to sign any papers, deliver them to **US**, and do anything else that is necessary to help **US** exercise **OUR** rights.

**E. General Provisions**

1. If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.
2. This **LIMITED WARRANTY** and the binding arbitration process are binding on **YOU** and **US**. It is also binding on **YOUR** and **OUR** heirs, executors, administrators, successors, and assigns, subject to paragraph B of the General Conditions.
3. As may be appropriate, the use of the plural in this **LIMITED WARRANTY** includes the singular, and the use of one gender includes all genders.

## **X. Definitions**

**BUILDER** means the individual, partnership, corporation or other entity which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides **YOU** with this **LIMITED WARRANTY**. Throughout this document the **BUILDER** is also referred to as "WE", "US" and "OUR".

**COMMON ELEMENTS** means the property as specified in the recorded Covenants, Conditions and Restrictions as common area and any other property as to which the **HOMEOWNERS ASSOCIATION** has

standing under the law to make a claim. This may include, but is not limited to, streets, slopes, the structure or components of enclosure or other parts of the **HOME**, corridors, lobbies, vertical transportation elements, rooms, balconies, clubhouses or other spaces that are for the common use of the residents of the development in which the **HOME** is located. **SYSTEMS** serving two or more **HOMES**, and the outbuildings that contain parts of such **SYSTEMS** are also included in this definition.

**CONSEQUENTIAL OR INCIDENTAL DAMAGES** means any loss or injury other than:

- A. **OUR** cost to correct a **CONSTRUCTION DEFECT** including the correction of those surfaces, finishes and coverings damaged by the **CONSTRUCTION DEFECT**;
- B. **OUR** cost of repair or replacement of furniture, carpet or personal property damaged by the **CONSTRUCTION DEFECT**. Should replacement be necessary, **OUR** obligation is limited to replacement with items providing the same function and quality and that are readily available at the time the item is being replaced.
- C. **OUR** costs of removal or replacement in order to repair or replace a **CONSTRUCTION DEFECT**;
- D. The reasonable cost of the **HOMEOWNER'S** alternative shelter where the **HOME** is uninhabitable due to a **CONSTRUCTION DEFECT** or where the **HOME** is rendered uninhabitable by the repair of the **CONSTRUCTION DEFECT**.

Diminished fair market value is considered "CONSEQUENTIAL OR INCIDENTAL DAMAGE" and is excluded under this **LIMITED WARRANTY** unless **WE** elect this remedy in lieu of the repair, replacement or other payment as to a **CONSTRUCTION DEFECT**.

**CONSTRUCTION DEFECT(S)** means a flaw in the materials or workmanship used in constructing the **HOME** that:

- materially affects the structural integrity of the **HOME** or the **COMMON ELEMENTS**; or
- has an obvious and material negative impact on the appearance of the **HOME** or the **COMMON ELEMENTS**; or
- jeopardizes the life or safety of the occupants; or
- results in the inability of the **HOME** or the applicable **COMMON ELEMENTS** to provide the functions that can reasonably be expected in a residential dwelling.

**WE** and any arbitrator assigned to rule relative to a **CONSTRUCTION DEFECT** will consider both this definition and Section III – A. (Standards By Which the Presence of a **CONSTRUCTION DEFECT** Will Be Determined) in determining the existence of a **CONSTRUCTION DEFECT**. A flaw is a **CONSTRUCTION DEFECT** if either **WE** or an arbitrator conducting a binding arbitration hearing declares the flaw to be a **CONSTRUCTION DEFECT**. **OUR** obvious and visible failure to complete the construction of the **HOME** or **COMMON ELEMENTS**, or any portion of the **HOME** or **COMMON ELEMENTS**, is not a **CONSTRUCTION DEFECT**.

**CONSUMER PRODUCT** means any item of equipment, appliance or other item defined as a **CONSUMER PRODUCT** in the Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301, *et seq.*) Examples of Consumer Products include, but are not limited to dishwasher, garbage disposal, gas or electric cook-top, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat.

**EMERGENCY CONDITION** means an event or situation that creates the imminent threat of damage to the **HOME** or **COMMON ELEMENTS**, or results in an unsafe living condition due to a **CONSTRUCTION DEFECT** that **YOU** (or as applicable, the **HOMEOWNERS ASSOCIATION**) become aware of at a point in time other than **OUR** normal business hours and **YOU** were unable to obtain **OUR** or **OUR** authorized representative's prior written approval to initiate repairs to stabilize the condition or prevent further damage.

**HOME** means a single family residence either attached or detached covered by this **LIMITED WARRANTY** or a condominium or cooperative unit in a multi-unit residential structure/building covered by this **LIMITED WARRANTY**.

**WARRANTY.**

**HOME BUILDER'S LIMITED WARRANTY** means only this express warranty document provided to **YOU** by **US**.

**HOMEOWNER** means the first person(s) to whom a **HOME** (or a unit in a multi-unit residential structure/building) is sold, or for whom such **HOME** is constructed, for occupancy by such person or such person's family, and such person's(s') successors in title to the **HOME**, or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, including any class representative or **HOMEOWNERS ASSOCIATION** making a claim in a representative capacity.

**HOMEOWNERS ASSOCIATION** means a profit or nonprofit corporation, unincorporated association, organization, partnership, assessment district, limited liability company, limited liability partnership or other entity of any kind that owns, manages, maintains, repairs, administers, or is otherwise responsible for and has standing to make a claim as to any part of the **COMMON ELEMENTS**.

**POLLUTANTS** means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and waste materials, including materials to be recycled.

**PWC** means Professional Warranty Service Corporation which administers the warranty program in which **WE** participate. As such, **PWC** assumes no other liabilities in connection with this **LIMITED WARRANTY**. The **PWC** mailing address is:

Professional Warranty Service Corporation  
P.O. Box 800 Annandale, VA 22003-0800

**SYSTEMS** means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers.

**WARRANTY PERIOD** shall commence on the date the title to the **HOME** is transferred to the first **HOMEOWNER**. Notwithstanding anything to the contrary set forth in this **LIMITED WARRANTY**, the **WARRANTY PERIOD** for the **COMMON ELEMENTS** of an individual structure/building commences on the date the title for the first **HOME** in the structure/building is transferred to the first **HOMEOWNER** or as concerns clubhouses or outbuildings or other **COMMON ELEMENTS** not part of the **HOME** the date the title to these structures is transferred to the **HOMEOWNERS ASSOCIATION**. The dates the **WARRANTY PERIOD** begins and ends are indicated on the Limited Warranty Validation Form which is attached to and made part of this **LIMITED WARRANTY**.

**WE, US, OUR** means the **BUILDER**.

**YOU, YOUR** means the **HOMEOWNER** and the **HOMEOWNERS ASSOCIATION**.

## BINDING ARBITRATION REQUEST FORM

Dear Homeowner (Homeowners Association):

Prior to requesting binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY, you should have ~~se~~ your builder a clear and specific written request outlining the situation or condition that you are herein submitting to bind arbitration. If you have taken this step and believe the builder has not properly responded in accordance with the HOME BUILDER'S LIMITED WARRANTY, fill out this form and send it to PWC along with the arbitration filing fee. Be sure to attach copy of all pertinent correspondence between you and your builder relative to the issue.

The information you need to fill out this form can be found on the Limited Warranty Validation Form. However, if you do not know the answers to any questions, write "Don't Know." Please do not leave any item blank.

Your name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

CITY

STATE

ZIP

Home Phone: (\_\_\_\_\_) \_\_\_\_\_  
Phone: (\_\_\_\_\_) \_\_\_\_\_

Business

LIMITED WARRANTY #: \_\_\_\_\_

Date Warranty Period begins: \_\_\_\_\_

Builder's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Describe the dispute that you wish to submit to binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY. If the dispute is relative to a construction defect please include information on when the construction defect(s) first occurred or when you first noticed the construction defect. (Attach additional sheets, if necessary).

*If we are hereby requesting PWC to initiate a binding arbitration to resolve the dispute described herein above.*

---

Signature

Date

---

Signature

Date

INSTRUCTIONS: Photo-copy this form and complete the fields.

Obtain the required arbitration filing fee by contacting PWC at 1-800/850-2799.

Send this Binding Arbitration Request Form and the arbitration filing fee to:

**PROFESSIONAL WARRANTY SERVICE CORPORATION**  
P. O. BOX 800  
ANNANDALE, VIRGINIA 22003-0800

PWC Form No. 301

0402

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**SUBSEQUENT HOME BUYER ACKNOWLEDGMENT AND TRANSFER**

Any coverage remaining under the HOME BUILDER'S LIMITED WARRANTY applicable to the home specified on the Limited Warranty Validation Form is transferred to the subsequent homeowner. Any obligations under the HOME BUILDER'S LIMITED WARRANTY to any subsequent homeowner shall not exceed the limit of liability remaining at the time of transfer, if any.

**The undersigned home buyer(s) hereby acknowledge and agree:**

**I/we acknowledge that I have reviewed, understand and agree to all the terms of the HOME BUILDER'S LIMITED WARRANTY document (PWC Form No. 117)**

**I/we understand and acknowledge that Professional Warranty Service Corporation ("PWC") is not the warrantor of the HOME BUILDER'S LIMITED WARRANTY.**

**I/we understand that I/we am responsible for the maintenance of the home including maintenance of the grade of the land surrounding the home, and that the builder shall not be responsible for any defect of damage to the home which is the result of my/our failure to maintain the home.**

**I/we acknowledge and agree to the Binding Arbitration Procedure contained in the HOME BUILDER'S LIMITED WARRANTY.**

**Signature(s) of Subsequent Home Buyer(s):** \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

**Print above name(s):** \_\_\_\_\_

**Re-issuance of the Limited Warranty Validation Form with the name(s) of the new Home Buyer(s) is not necessary for you to receive the coverage remaining under the HOME BUILDER'S LIMITED WARRANTY. Upon receipt of this signed form, PWC will update its records to reflect the name(s) of the new homeowner(s). If you want PWC to issue another Limited Warranty Validation Form with your name(s) on the form, please check the box below and send a check in the amount of \$20.00 made payable to "PWC" with your submission of this form.**

**YES, re-issue the Limited Warranty Validation Form in the above name(s)  (check box) Initial \_\_\_\_\_**

**Address of Home: \_\_\_\_\_**

**Limited Warranty No.: \_\_\_\_\_**

**INSTRUCTIONS: Photo-copy this form. Provide information requested, sign, fill in Limited Warranty # in the space provided (this number is provided on the Limited Warranty Validation Form), and provide a telephone number where you can be reached (\_\_\_\_\_) \_\_\_\_\_. If you want the Limited Warranty Validation Form reissued in your name, enclose your check to PWC in the amount of \$20.00 (check box above and initial). To reach PWC by phone, call: 1-800/850-2799.**

**Mail this form and a photocopy of applicable settlement/closing documents indicating transfer of title, to:**

**PROFESSIONAL WARRANTY SERVICE CORPORATION P.O. BOX 800 ANNANDALE, VA 22003-0800**

Limited Warranty Validation Form

LIQUID WIRING CABLES STN-313071

**Address of Covered Home:** 2222 Main Street, Park City, AZ 82680

Light of Lubavitch

## WARRANTY PERIOD: One year

01/13/2004

Repair or replacement of parts or items at the discretion of the manufacturer, for any damage, personal or otherwise, resulting from the use of the Home or Common Elements, except (i) damage resulting from normal wear and tear, (ii) damage resulting from abuse, misuse, negligence, or acts of nature, or (iii) damage resulting from acts of God, such as wind, rain, snow, lightning, fire, flood, or other natural disasters, but not an event exceeding eight years (except where otherwise provided in the Home or Common Elements) or (iv) damage resulting from the use of parts or items not supplied by the manufacturer or not in accordance with the manufacturer's recommendations.

John Q.  
Smith, Mary E.  
2222 Main Street  
Park City, AZ 821

**Administrator:** Professional Warranty Service Corporation  
P. O. Box 380  
Annandale, VA 22003-0380  
(703) 476-8889

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## EXHIBIT "C"

## ALTERNATIVE DISPUTE RESOLUTION PROVISIONS

1. **DEFINITIONS.** For purposes of this Exhibit "C" ("ADR Provisions") only: (i) "Tract Declarant" means and includes Tract Declarant, any director, officer, partner, member, employee, agent, or representative of Tract Declarant, and any contractor, subcontractor, design professional, engineer, or supplier who provided labor, services or materials to a Lot or Dwelling Unit on the Tract and who is bound or has agreed to be bound to the following or similar dispute notification and resolution procedures; (ii) "Dispute" means any and all actions or claims between any Tract Declarant party on the one hand and any Owner/subsequent Owner on the other hand arising out of or in any way relating to the Tract, any Lot(s) or improvements(not located within Common Area Tracts) in the Tract, the Tract Declaration, a purchase and sale contract between Owner and Tract Declarant for the purchase and sale of a Lot ("Contract"), liquidated damages issued under a Contract, the Home Warranty (as defined in Section 2 of the Tract Declaration), and/or any other agreements or duties or liabilities as between any Tract Declarant or Owner party and an Owner/subsequent Owner relating to the sale or transfer of the Lot, or regarding the use or condition of the Lot, or the design or construction of or any condition on or affecting the Tract and/or any Lot in the Tract, including without limitation construction defects, surveys, soils conditions, grading, specifications, installation of improvements, or disputes which allege strict liability, negligence or breach of implied or express warranties as to the condition of the Lot, or other portions of the Tract. Disputes do not include actions taken by or against the Association created under the Master Declaration.
2. **ARBITRATION OF DISPUTES.** WITH RESPECT TO ALL DISPUTES, TRACT DECLARANT AND OWNER/SUBSEQUENT OWNER SHALL COMPLY WITH THE DISPUTE RESOLUTION AND ARBITRATION PROCEDURES AND PROVISIONS SPECIFIED IN THE HOME WARRANTY WHICH ARE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1-16).

Notwithstanding the dispute resolution procedures specified in the Home Warranty and upon written request of Owner/subsequent Owner, Tract Declarant agrees to pay on Owner's/subsequent Owner's behalf (or, upon satisfactory evidence, to reimburse them) the amount of the arbitration initiation/filing fees in excess of the amount of the filing fees for a civil lawsuit required under local law at the time. Tract Declarant and Owner/subsequent Owner may agree to otherwise change the applicable dispute resolution procedures, but only by a written agreement to do so signed by both Owner/subsequent Owner and Tract Declarant.

The procedures specified in the Home Warranty and these ADR Provisions are to be interpreted and enforced as authorized by the Federal Arbitration Act (9 U.S.C. §§ 1-16), which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy court proceedings. Interpretation and application of these procedures shall conform to Federal court rulings interpreting and applying the Federal Arbitration Act. References to any state law made in this Exhibit shall not be construed as a

waiver of any rights under the Federal Arbitration Act or of any rights to have the procedures set forth in the Home Warranty and/or these ADR Provisions interpreted and enforced under the Federal Arbitration Act.

**3. SECONDARY ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AND PROVISIONS.** TO THE EXTENT ANY OF THE DISPUTE RESOLUTION OR ARBITRATION PROCEDURES AND PROVISIONS SPECIFIED IN THE HOME WARRANTY ARE DETERMINED TO BE UNENFORCEABLE IN WHOLE OR IN MATERIAL PART PREVENTING THEIR USE, TRACT DECLARANT AND OWNER/SUBSEQUENT OWNER SHALL COMPLY WITH THE DISPUTE RESOLUTION PROCEDURES AND PROVISIONS SET FORTH IN THIS PARAGRAPH.

(a) **Pre-Litigation Procedures.** Any person asserting a Dispute shall notify Tract Declarant in writing of the Dispute, which writing reasonably shall describe the nature of the claim and any proposed remedy ("Claim Notice"). Within a reasonable period (not to exceed 60 days) after receipt of the Claim Notice, Tract Declarant and the claimant (and any other involved Tract Declarant parties provided with the Claim Notice) shall meet at a mutually acceptable place within the Tract to discuss the claim. At such meeting or at such other mutually agreeable time, Tract Declarant and Tract Declarant's representatives shall have and/or be provided full access to the property that is the subject of the claim, and shall have the right to conduct inspections and testing, including destructive or intrusive testing, of the same, in a manner deemed appropriate to Tract Declarant, which rights shall continue until the Dispute is resolved. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If Tract Declarant elects to take any corrective action, Tract Declarant and Tract Declarant's representatives shall be provided full access to the Lot and the Tract to take and complete corrective action. Tract Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value, or other loss which Owner/subsequent Owner may suffer as a result of any defect in the Lot which reasonably might have been avoided had Owner/subsequent Owner given to Tract Declarant the notice and opportunity to cure described above. These ADR Provisions do not establish any duty, obligation, or warranty (express or implied) on the part of Tract Declarant to repair, replace or cure any defect in the Lot. Owner's/subsequent Owner's rights with respect to the foregoing shall be governed by the Home Warranty provided by Tract Declarant.

(b) **Adversarial Dispute Resolution Procedures.**

(i) **AAA ARBITRATION.** If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in paragraph 3(a), the Dispute shall be submitted for resolution pursuant to binding arbitration by American Arbitration Association ("AAA"), or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties to the Dispute, pursuant to its standard arbitration procedures for construction matters. The parties to the Dispute shall cooperate in this arbitration proceeding. The arbitrator in this proceeding shall have the authority to try and shall try all issues, whether of fact or law, including without limitation, the validity, scope and enforceability of these dispute resolution provisions, and to report a statement of decision to the court. All

parties to the Dispute shall use the arbitrator's standard arbitration procedures for construction matters, provided that the rules and procedures set forth in paragraph 3(b)(ii) shall apply in all cases unless the parties to the Dispute agree otherwise in writing.

(ii) **RULES AND PROCEDURES.** The following rules and procedures apply to any arbitration proceeding pursuant to this paragraph 3(b):

- (A) The arbitrator must be a neutral and impartial retired judge, attorney, or other person with substantial experience in relevant matters. Any dispute regarding the selection of the arbitrator shall be resolved by the entity providing the arbitration, or, if no such entity is involved, by the court with appropriate jurisdiction.
- (B) The arbitration shall proceed without a jury.
- (C) The parties to the Dispute shall be entitled to conduct all discovery as otherwise provided in the Arizona Revised Statutes, and the arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and/or enforce subpoenas, protective orders or other limitations on discovery available under Arizona law. In the context of construction defect Disputes, all parties to the Dispute shall be deemed to consent to and/or are entitled to reasonable site inspections, visual inspections, destructive testing, and other discovery mechanisms commonly employed in such disputes.
- (D) The arbitration proceeding shall be conducted in accordance with Arizona law (including the rules of evidence), and in all regards the arbitrator shall follow Arizona law as applicable at the time of the dispute resolution proceeding. The arbitrator may issue any remedy or relief that the courts of the State of Arizona could issue if presented the same circumstances, and the arbitrator shall follow and otherwise employ the standards for issuing such relief as defined by Arizona law. The arbitrator may require one or more pre-hearing conferences. A stenographic record of the arbitration hearing shall be made. The arbitrator's statement of decision shall contain findings of fact and conclusions of law to the extent applicable. The arbitrator shall have the authority to rule on all post-hearing motions in the same manner as a trial judge. The statement of decision of the arbitrator upon all of the issues considered by the arbitrator is binding upon the parties to the Dispute, and upon filing the statement of decision with the clerk of any court of the State of Arizona having jurisdiction thereof, or with the judge if there is no clerk, judgment may be entered thereon. The judgment and decision of the arbitrator shall be appealable in the same manner and subject to the same rules as if rendered by the court.
- (E) If a Dispute involves parties other than those listed above, this provision shall be interpreted to bring those third-party disputes into the dispute resolution procedures prescribed herein to the fullest extent permitted by law. All parties

to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the proceeding. Tract Declarant, as defined in the Tract Declaration, shall not be required to participate in the proceeding if all parties against whom Tract Declarant has necessary or permissive cross-claims or counterclaims, including without limitation other Tract Declarant parties, will not or cannot be joined in the proceeding such that Tract Declarant may be forced to litigate in two separate forums or may suffer inconsistent rulings.

- (F) The exclusive venue for all dispute resolution proceedings conducted under this paragraph 3 shall be in the county in which the Tract is located.
- (G) The parties to a Dispute shall bear their own attorneys' fees and expert fees in any dispute resolution proceeding conducted pursuant to these ADR Provisions. Tract Declarant shall initially advance (or, upon satisfactory evidence, reimburse) the amount of any arbitration filing fees in excess of the amount of the filing fees for a civil lawsuit required under local law at the time. Other and/or ongoing fees and costs of the arbitrator shall be divided equally between the claimant(s), on one hand, and Tract Declarant and any other parties to the proceeding, on the other hand. In the event that any of the foregoing provisions for payment of the arbitrator's fees and costs are determined by the arbitrator, or by a court, to be unenforceable for any reason, then such unenforceable provisions shall be deemed severed and Tract Declarant shall instead advance all arbitrator fees and costs associated with the proceeding. In any event, the arbitrator may ultimately re-allocate such fees and costs among all parties to the proceeding in his or her discretion as the interests of justice dictate.

**4. WAIVER OF COURT AND JURY TRIAL.** AS TO ALL DISPUTES COVERED BY THESE ADR PROVISIONS AND ALL DISPUTE RESOLUTION PROCEDURES SET FORTH OR REFERENCED HEREIN, TRACT DECLARANT AND OWNER/SUBSEQUENT OWNER WAIVE ANY RIGHTS TO APPEAL, JURY TRIAL AND OTHER CIVIL LITIGATION PROCEEDINGS FOR SUCH DISPUTES, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH OR REFERENCED IN THESE ADR PROVISIONS. IN THE EVENT THAT ANY OF THE PROCEDURES SET FORTH OR REFERENCED HEREIN ARE DETERMINED TO BE INVALID OR UNENFORCEABLE IN WHOLE OR MATERIAL PART, SUCH THAT THE DISPUTE PROCEEDS BY WAY OF CIVIL LITIGATION PROCEEDINGS, TRACT DECLARANT AND OWNER/SUBSEQUENT OWNER NONETHELESS WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL WITH RESPECT TO THE DISPUTE. TRACT DECLARANT AND OWNER/SUBSEQUENT OWNER MAKE THESE WAIVERS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE HAD THE OPPORTUNITY TO BE ADVISED BY INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH THESE ADR PROVISIONS AND IN MAKING THESE WAIVERS. THE PARTIES FURTHER ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THESE WAIVERS, AND INTEND THESE WAIVERS BE READ

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AS BROADLY AS POSSIBLE AND TO EXTEND TO ALL DISPUTES EXCEPT AS OTHERWISE PROVIDED HEREIN. HOWEVER, THESE ADR PROVISIONS SHALL IN NO WAY BE CONSTRUED TO LIMIT THE RIGHT OF ANY PARTY TO BE REPRESENTED BY COUNSEL IN ANY PROCEDURES PURSUANT TO THESE ADR PROVISIONS.

5. **COOPERATION CLAUSE.** The parties to any Dispute shall at all times cooperate so as to permit compliance with the terms of these ADR Provisions and to accomplish their purposes.
6. **CHOICE OF FORUM CLAUSE.** In the event any party to a Dispute subject to these ADR Provisions seeks review by a court of the enforceability of any of the ADR Provisions set forth or referenced herein (despite the provisions herein making that issue one to be resolved by the arbitrator), the exclusive jurisdiction and venue for any such review shall be the Federal District Court for the county in which the Tract is located.
7. **SURVIVAL OF PROVISIONS.** If any provision or part of these ADR Provisions is for any reason held to be invalid, unconscionable, contrary to any public policy, law, statute and/or ordinance, or unenforceable for any other reason, then such unenforceable provision(s) or part(s) shall be deemed severed and the remainder of these ADR Provisions shall not be affected thereby and shall remain valid and fully enforceable notwithstanding the severance and unenforceability of the severed portions.

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**EXHIBIT "D"****DISCLAIMER AND WAIVER OF WARRANTIES AND OTHER RIGHTS**

THE HOME WARRANTY TO BE ISSUED TO OWNERS IS THE ONLY WARRANTY, EXPRESS OR IMPLIED, MADE BY TRACT DECLARANT WITH REGARD TO THE LOTS AND DWELLING UNITS. TRACT DECLARANT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING EITHER LATENT OR PATENT DEFECTS IN THE LOTS AND DWELLING UNITS, OR ANY COMPONENTS THEREOF, OR FIXTURES OR PERSONAL PROPERTY INSTALLED THEREIN, OR AS TO THE MERCHANTABILITY, FITNESS, HABITABILITY, OR QUALITY THEREOF, AND DISCLAIMS ANY SUCH WARRANTIES AND REPRESENTATIONS, TO THE FULLEST EXTENT ALLOWED BY LAW.

SPECIFICALLY, AND NOT BY WAY OF LIMITATION, TRACT DECLARANT HAS NOT MADE ANY REPRESENTATION REGARDING VIEWS, THE FUTURE USE, APPEARANCE OR HEIGHT OF SURROUNDING PROPERTY, SELLING PRICE OF OTHER HOMES, FUTURE USE, APPEARANCE OR HEIGHT OF ADJOINING PROPERTY, OR DESIRABILITY OF ANY PARTICULAR LOCATION. TRACT DECLARANT MAKES NO WARRANTY OR REPRESENTATION AS TO THE PRESENCE OR NON-PRESENCE OF RADON, METHANE OR OTHER NATURALLY OCCURRING HAZARDOUS ENVIRONMENTAL CONDITIONS, OR TO THE EFFECT OF ANY SUCH CONDITION ON THE LOT/TRACT OR OWNERS.

NOTWITHSTANDING THE FOREGOING, TRACT DECLARANT'S WARRANTY SHALL IN NO EVENT EXTEND TO ANY CONSUMER PRODUCT, APPLIANCES, AIR CONDITIONING UNITS, FURNACES, WATER HEATERS AND OTHER PRODUCTS INCLUDED IN THE LOT/TRACT THAT ARE CONSIDERED "CONSUMER PRODUCTS" AS DEFINED BY THE FEDERAL TRADE COMMISSION FOR THE PURPOSES OF THE MAGNUSON MOSS ACT (15 U.S.C. 2301 ET SEQ.) THAT MAY BE INCLUDED IN ANY TRANSACTION WITH ANY OWNER. THE MANUFACTURERS OF SOME PRODUCTS USED IN THE DWELLING UNIT MAY PROVIDE A MANUFACTURER'S WARRANTY. TRACT DECLARANT HAS NO OBLIGATION OR RESPONSIBILITY FOR THE MANUFACTURER'S PERFORMANCE, AND TRACT DECLARANT DOES NOT WARRANT ANY OF THESE ITEMS FOR ANY USE, FITNESS FOR USE, WORKMANSHIP, QUALITY OR ANY OTHER PURPOSE.

NO SALESPERSON, EMPLOYEE OR AGENT OF TRACT DECLARANT HAS AUTHORITY TO MODIFY THE TERMS OF THIS EXHIBIT. THIS EXHIBIT SUPERSEDES ANY PROMISES, AGREEMENTS, OR OTHER REPRESENTATIONS MADE BY ANY SALESPERSON, EMPLOYEE OR AGENT OF TRACT DECLARANT, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE MATTERS SET FORTH IN THIS EXHIBIT.

PHX/GPERRY/1552600.2/87539.070

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20070023383 01/05/2007 03:04  
ELECTRONIC RECORDING

When recorded, return to

8696-38-1-1--  
Tomutac

Richmond American Homes of Arizona, Inc.  
9520 West Palm Lane, Suite 200  
Phoenix, Arizona 85037  
Attn: Michael Fulmer

**DECLARATION OF ADDITIONAL COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
CENTERRA VILLAGE COURT**

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**DECLARATION OF ADDITIONAL COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
CENTERRA VILLAGE COURT**

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**DECLARATION OF ADDITIONAL COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
CENTERRA VILLAGE COURT**

This Declaration of Additional Covenants, Conditions, Restrictions and Easements for Centerra Village Court is made this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Richmond American Homes of Arizona, Inc., a Delaware corporation.

**ARTICLE 1**

**DEFINITIONS**

1.1 Annual Assessments means the Assessments levied pursuant to Section 6.2.

1.2 Areas of Common Responsibility means all Common Area, together with (a) all land, and the Improvements situated thereon, within the Subdivision in which the Subassociation has a leasehold interest, easement or license, or with respect to which the Subassociation has maintenance obligations pursuant to requirement imposed by the City, for as long as the Subassociation holds such leasehold interest, easement or license, or has such maintenance obligations, (b) all land, and the Improvements situated thereon, within the Subdivision which the Declarant indicates on a Recorded subdivision plat or other Recorded instrument is to be conveyed to the Subassociation for the benefit and use of the Members, (c) all land, the Improvements situated thereon, which is situated within the boundaries of a Lot, including the areas on each Lot located between the sidewalk and the curb, and the unenclosed side yard area of a corner Lot, and which is designated on a Recorded subdivision plat Recorded by the Declarant or approved by the Declarant or the Subassociation as land which is to be improved, maintained, repaired and replaced by the Subassociation, (d) all land, the Improvements situated thereon, within or adjacent to the Subdivision which the Declarant indicates on a Recorded subdivision plat or other Recorded instrument is to be used for landscaping, drainage or water retention or flood control for the benefit of the Subdivision or the general public, and (e) all real property, and the Improvements situated thereon, within or adjacent to the Subdivision located within dedicated rights-of-way with respect to which the City or the Master Association has not accepted responsibility for the maintenance thereof, but only until such time as the City or the Master Association has accepted all responsibility for the maintenance, repair and replacement of such areas, and only if the specific areas to be maintained, repaired and replaced by the Subassociation pursuant to this clause (e) have been expressly approved by either the Declarant or the Board.

1.3 Articles means the articles of incorporation of the Subassociation, as amended from time to time.

1.4 Assessable Property means each Lot, except for Exempt Property.

ERROR: UNKNOWN DOCUMENT PROPERTY NAME.

1.5 Assessment means an Annual Assessment or a Special Assessment.

1.6 Assessment Lien means the lien created and imposed by Article 5.

1.7 Assessment Period means the period set forth in Section 5.6.

1.8 Board means the board of directors of the Subassociation.

1.9 Bylaws means the bylaws of the Subassociation, as amended from time to time.

1.10 CBU means any cluster box unit installed within or adjacent to the Property to receive mail delivery from the United States Postal Service to Owners and Occupants of Lots within the Property. Any CBU shall be deemed an Improvement, and except as otherwise provided in this Declaration, shall be deemed to be a part of the Areas of Common Responsibility.

1.11 City means the City of Goodyear, Arizona.

1.12 Common Area means all land, together with all Improvements situated thereon, which the Subassociation owns in fee.

1.13 Common Expenses means expenditures made by or financial liabilities of the Subassociation, together with any allocations to reserves.

1.14 Declarant means Richmond American Homes of Arizona, Inc., a Delaware corporation, its successors and any Person to whom it may expressly assign any or all of its rights under this Declaration.

1.15 Declarant Affiliate means any Person directly or indirectly controlling, controlled by or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which the Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.16 Declaration means this Declaration of Additional Covenants, Conditions, Restrictions and Easements for Centerra Village Court, as amended from time to time.

1.17 Exempt Property means: (a) all land and improvements owned by, or dedicated to and accepted by, the United States, the State of Arizona, the City, or, or any political subdivision of any of them, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective; and (b) all Common Area.

1.18 First Mortgage means a Mortgage Recorded against a Lot which has priority over all other Mortgages Recorded against that Lot.

1.19 Improvement means: (a) any Residential Unit, building, fence or wall; (b) any swimming pool, tennis court, basketball court, road, parking area, pedestrian trail, recreational area, sidewalk, street lighting, Subdivision entry features and signage, or satellite dish; (c) any trees,

plants, shrubs, grass or other landscaping improvements of every type and kind; (d) any statuary, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot); and (f) any other structure of any kind or nature.

1.20 Lessee means the lessee or tenant under a lease, oral or written, of any Lot or Residential Unit thereon), including an assignee of the lessee's or tenant's interest under a lease.

1.21 Lot means a portion of the Subdivision intended for independent ownership and residential use and designated as a lot on any Recorded subdivision plat executed or approved by the Declarant (including, without limitation, the Plat), and, where the context indicates or requires, includes any Residential Unit, building, structure or other improvements situated on the Lot.

1.22 Mailbox means any individual mailbox contained within a CBU, any individual mailbox located on a Lot, or any individual mailbox located, as one of a pair of individual mailboxes, on a single post shared by two adjacent Lots (and by the Owners or Occupants thereof).

1.23 Master Declaration means the Declaration of Covenants, Conditions and Restrictions for Centerra Single-Family Detached Recorded on August 2, 2002, as Instrument No. 2002-0790569, as amended from time to time.

1.24 Maximum Annual Assessment has the meaning given that term in Section 5.4.

1.25 Member means any Person who is a Member of the Subassociation as provided in Section 4.7.

1.26 Membership means a membership in the Subassociation.

1.27 Mortgage means a deed of trust or a mortgage Recorded against a Lot.

1.28 Mortgagee means a beneficiary under a deed of trust, or a mortgagee under a mortgage, Recorded against a Lot, and First Mortgagee means such a beneficiary or mortgagee under a First Mortgage.

1.29 Occupant means any Person other than an Owner who occupies or is in possession of a Lot, or any portion thereof or building or structure thereon, whether as a Lessee or otherwise, other than on a merely transient basis (and includes, without limitation, a Resident).

1.30 Owner means the Person or Persons who individually or collectively own fee title to a Lot (as evidenced by a Recorded instrument), but: (a) the Declarant (and not the fee title holder) will be deemed to be the "Owner" of each Lot with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of the Declarant or a Declarant Affiliate; (b) if and for so long as the Declarant or a Declarant Affiliate has, pursuant to a written agreement, an existing right or option to acquire any one or more Lots (other than by exercise of a right of first refusal or right of first offer), the Declarant will also be deemed to be the "Owner" of each Lot with respect to which the Declarant or a Declarant Affiliate has such right or option; and (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust

pursuant to Chapter 6.1 of Title 33 of the Arizona Revised Statutes, the owner of the trustor's interest under the deed of trust will be deemed to be the "Owner" of that Lot. Where reference is made in this Declaration to Lots "owned by" a Person, such phrase will be deemed to refer to Lots of which that Person is the Owner, as determined pursuant to this Section.

1.31 Period of Declarant Control means the period beginning on the date of the Recording of this Declaration and ending on the earlier of: (a) one hundred twenty (120) days after the number of votes entitled to be cast by Owners other than the Declarant exceeds the number of votes entitled to be cast by the Declarant; (b) the last day of the year in which occurs the tenth (10th) anniversary of the date this Declaration is Recorded; or (c) the date the Declarant Records a written instrument terminating the Period of Declarant Control.

1.32 Person means a natural person, corporation, business trust, estate, trust, partnership, Subassociation, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.33 Plat means the replat Recorded in Book 854 of Maps, page 2, official records of Maricopa County, Arizona, and any amendments or supplements thereto.

1.34 Purchaser means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot, is expressly assigned any or all of the Declarant's rights as the Declarant under this Declaration.

1.35 Record, Recording, Recorded and Recordation means placing or having placed an instrument of public record in the official records of Maricopa County, Arizona.

1.36 Resident means each individual who resides in any Residential Unit.

1.37 Residential Unit means any building, or portion of a building, situated upon a Lot and designed and intended for separate, independent use and occupancy as a residence.

1.38 Special Assessment means any Assessment levied pursuant to Section 5.5.

1.39 Subassociation means Centerra Village Court Homeowners Association, an Arizona nonprofit corporation, and its successors and assigns.

1.40 Subassociation Rules means the rules adopted by the Board pursuant to Section 4.3, as amended from time to time.

1.41 Subdivision means the real property described on Exhibit A, together with all Improvements located thereon.

1.42 Subdivision Documents means this Declaration, Plat, the Articles and Bylaws of the Subassociation, and the Subassociation Rules (if applicable).

1.43 UBE Easements means the Use and Benefit Easements established pursuant to Section 3.5.

1.44 USPS means the United States Postal Service, or its successors and assigns having general authority and responsibility for providing delivery service of the United States mail, and the branch office thereof that provides United States mail service to the Property.

1.45 Vehicle means any car, truck or van, regardless of size, motorcycle, motorbike, moped, mini-bike, motor scooter, all-terrain vehicle, off-road vehicle, motorhome, recreational vehicle, trailer, travel trailer, tent trailer, camper shell, detached camper, boat, boat trailer, mobile home, or other similar machinery or equipment, whether motorized or not, whether wheeled or not, and whether or not in operating condition.

1.46 Vote or Votes means, with respect to votes of Members, a vote or votes cast by Members entitled to vote either: (a) in person; or (b) by absentee ballot; or (c) only if during the Period of Declarant Control, by a proxy duly appointed by a written instrument signed by a Member, dated not more than eleven (11) months prior to such meeting. Thus, by way of example and not limitation, a provision in this Declaration that requires that an action be approved by a "75% Vote" (or by "75% of the Votes") means that the action in question would have to receive the affirmative vote of Members holding at least 75% of votes of Members of the Association that are entitled to be cast and that are held by Members who are (i) present at a meeting duly called for such purpose, or (ii) cast by Members by absentee ballot, or (iii) during the Period of Declarant Control, cast by Members pursuant to a valid proxy. Proxies are not permitted and shall not be counted for any purpose after the expiration or termination of the period of Declarant Control.

## ARTICLE 2

### PLAN OF DEVELOPMENT/LANDSCAPING

2.1 Property Initially Subject to the Declaration. This Declaration is being Recorded to establish certain easements and restrictions affecting the Property within the Subdivision. All of the property within the Subdivision will be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and the Project Documents (as defined in the Master Declaration). In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration will run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees and transferees thereof, subject to the Master Declaration, the Association Rules (as defined in the Master Declaration) and the jurisdiction of Centerra Homeowners Association, an Arizona non-profit corporation (the "Master

Association"). Furthermore, each such Person fully understands and acknowledges that this Declaration will be mutually beneficial, prohibitive and enforceable by the Subassociation and all Owners.

**2.2 Disclaimer of Representations.** The Declarant makes no representations or warranties whatsoever that: (a) the Subdivision will be completed in accordance with the plans for the Subdivision as they exist on the date this Declaration is Recorded; (b) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (c) any property not now subject to this Declaration will be subjected to the provisions hereof; or (d) the use of any property subject to this Declaration will not be changed in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen representing the Declarant will be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration.

**2.3 Installation and Maintenance of Landscaping.** Notwithstanding anything to the contrary in Section 5.21 of the Master Declaration, each Owner of a Lot must install (if not already installed) grass, trees, plants and other landscaping improvements (together with an irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements), in compliance with the restrictions in Section 3.6, not later than one hundred eighty (180) days after the date on which title to the Lot is first conveyed to a Purchaser (as evidenced by Recordation of a deed), and must properly maintain and keep neatly trimmed, properly watered and cultivated and free of trash, weeds and other unsightly material all shrubs, trees, hedges, grass and plantings of every kind (collectively, "Landscaping") located on: (a) any enclosed area the Owner's Lot; (b) the area located on each Owner's Lot between the sidewalk and the curb, and the side yard for Lots located on corners; and (c) any enclosed area of a UBE Easement as set forth in Article 3 benefiting his, her or its Lot. Owner will not be responsible for maintenance of any area over which: (i) the Subassociation assumes the responsibility in writing; (ii) the Subassociation has been given such responsibility by a Recorded instrument executed by the Declarant during the Period of Declarant Control; or (iii) the Master Association or the City or any other municipality or other governmental agency or entity having jurisdiction over such property assumes responsibility, for so long as the Master Association or the City or such other municipality or other governmental agency or entity assumes or has responsibility. For purposes of this Section 2.3, proper maintenance of Landscaping includes, without limitation, removal and replacement of dead Landscaping. Treated effluent may be used by the Subassociation to irrigate all or portions of the Areas of Common Responsibility.

**2.4 Disclosure of Proximity of Airport.** The Subdivision is located in close proximity to Luke Air Force Base and/or the Phoenix-Goodyear Airport (individually and collectively, "Airport"). Due to the proximity of the Subdivision to the Airport, the Subdivision may be subjected to attendant noise, vibrations, dust, use of lighting during evening and nighttime activities, and all other effects that may be caused by overflights, the operation of aircraft landing at, or taking off from the Airport and any time of the day or night, and other activities associated with the normal operations of the Airport. All Owners, Residents and other Persons subject to this Declaration release and discharge the City, the Declarant, all Declarant Affiliates and all members of the Board and officers of the Master Association and Subassociation from any and all claims for liability, loss, damage, property damage, bodily injury, marketability, diminution in value and any other matters arising from or related to the existence and operation of the Airport.

**2.5 Disclosure of Proximity of Commercial and/or Multi-Family Uses.** The Subdivision is located in close proximity to land designated for development for commercial and/or multi-family uses and may be subject to potential noise intrusion, vibrations, dust, use of lighting during evening and nighttime activities, and all other effects that may be caused by such uses. All Owners, Residents and other Persons subject to this Declaration release and discharge the City, the Declarant, all Declarant Affiliates and all members of the Board and officers of the Master Association and Subassociation from any and all claims for liability, loss, damage, property damage, bodily injury, marketability, diminution in value and any other matters arising from or related to the existence and operation of any such commercial and/or multi-family uses.

## ARTICLE 3

### ADDITIONAL EASEMENTS AND RESTRICTIONS

#### 3.1 Declarant's Use and Easements.

3.1.1 The Declarant has the right and an easement to maintain sales or leasing offices, management offices and models throughout the Subdivision and to maintain one or more advertising signs on the Common Area or any other Areas of Common Responsibility (and other portions of a Lot if the Owner of such Lot consents thereto) with respect to the sales of Lots in the Subdivision or within any of the Additional Property. The Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots or other property owned by the Declarant and on any portion of the Common Area in such number, of such size and in such locations as the Declarant deems appropriate.

3.1.2 So long as the Declarant is marketing Lots within the Property (or any portion of the Additional Property), the Declarant will have the right to restrict the use of the parking spaces on the Common Area. That right will include reserving such spaces for use by prospective Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

3.1.3 The Declarant has the right and an easement on and over the Common Areas and the other Areas of Common Responsibility to construct all Improvements the Declarant may deem necessary and to use the Common Areas and the other Areas of Common Responsibility and any Lots and other property owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Subdivision and property adjacent to the Subdivision.

3.1.4 The Declarant has the right and an easement upon, over and through the Common Area and any other Areas of Common Responsibility as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by, and for performing the obligations imposed on, the Declarant in this Declaration.

3.2 Easement in Favor of Subassociation. The Lots are hereby made subject to the following easements in favor of the Subassociation and its directors, officers, agents, employees and independent contractors:

3.2.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

3.2.2 For construction, inspection, maintenance, repair and replacement on, and removal from, portions of the Common Area and any other Areas of Common Responsibility, signs or monuments that identify the subdivision, which are accessible only from such Lots;

3.2.3 For correction of emergency conditions on one or more Lots or on portions of the Common Area and the Areas of Common Responsibility accessible only from such Lots;

3.2.4 For the purpose of enabling the Subassociation, the Board, or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Subdivision Documents;

3.2.5 For inspection during reasonable hours of the Lots in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Subdivision Documents.

3.3 Creation and Maintenance of Use and Benefit Easements. The UBE Easements ("UBE Easements") are hereby declared, created, granted and established over portions of certain Lots within the Property, as more particularly provided in this Section 3.3, and upon and subject to the terms, conditions, provisions, restrictions, covenants and obligations set forth in this Section 3.3 and elsewhere in this Declaration. Those Lots which are subject to UBE Easements, and the portions of those Lots which are within the Easement Area (as defined herein) subject thereto, are shown on the Plat and are further described below. A UBE Easement (and the Easement Area subject thereto) shall be maintained by the Owner of the Benefited Lot.

3.4 Easement Areas. A Lot may be a Burdened Lot (as defined below) subject to an easement in favor of an adjacent Benefited Lot (as defined below). Those portions of a Lot which are subject to a UBE Easement will be referred to herein as "Easement Areas," and the actual location and dimension of each Easement Area is further described below. Attached hereto as Exhibit B is a diagram depicting the location and the manner in which the Easement Areas for the UBE Easements on affected Lots are to be determined.

3.5 Location and Purpose of Use and Benefit Easements. UBE Easements shall exist upon, over and across a portion of the side yard of each Burdened Lot, including any part of the Burdened Lot which is enclosed by a common fence wall or a common wall between two Residential Units. In general, the Easement Area of a UBE Easement across a Burdened Lot will be that portion of that Burdened Lot from its shared property line with the adjacent Benefited Lot extending to the nearest exterior wall of the Residential Unit on that Burdened Lot, and bounded at either end by fence walls connecting the Residential Unit on the applicable Burdened Lot to the Residential Unit on the applicable adjacent Benefited Lot (and which front and rear fence wall is built for the purpose of creating and enclosing a side yard for the Owner of that

Residential Unit). A Lot which is burdened or encumbered by such a UBE Easement will be referred to herein as a "Burdened Lot", and a Lot adjacent to a Burdened Lot will be referred to herein as a "Benefited Lot" with respect to a UBE Easement as shown on the Plat. UBE Easements may be used by the Owner of the applicable Benefited Lot (and such Owner's Occupants) for drainage purposes, maintenance of the side yard return wall and the exterior portion of the residence and garage, subject to the restrictions contained in this Declaration. Without limiting the generality of the foregoing, rainwater may drain from the roof of the Residential Unit on the Benefited Lot onto the Easement Area of the UBE Easement benefiting such Lot. An Owner is responsible for maintaining landscaping within any enclosed area of a UBE Easement benefiting his, her or its Lot. Subject to the other provisions of this Declaration, UBE Easements shall be nonexclusive, and the Easement Area subject to UBE Easements may be used by the Owner and Occupants of the Burdened Lot containing such Easement Area for maintenance purposes of any wall or other portion of the Residential Unit (or any other structure) on the Burdened Lot not otherwise reasonably accessible from other portions of the Burdened Lot, so long as such use does not (a) interfere with the flow of drainage water or otherwise impair the uses for which the UBE Easement is established pursuant to this Declaration; or (b) otherwise modify in any way the drainage pattern as originally constructed by Declarant.

3.6 Restrictions on Uses of UBE Easements. UBE Easements and the uses thereof by the Owner of the applicable Benefited Lot (and such Owner's Occupants, guests, invitees, licensees, agents or contractors) shall be subject to the following conditions, restrictions and limitations:

3.6.1 no excavation shall be permitted anywhere within the Easement Area.

3.6.2 no materials shall be placed or stored within the Easement Area which might attract insects or other pests.

3.6.3 no hardscape structures such as, but not limited to, pools, spas, hot tubs, concrete pads, cool decking, barbecue structures, or other structures or pavement of any kind shall be placed within the Easement Area.

3.6.4 no water shall be discharged (including, without limitation, backwash or discharge of water from a swimming pool or spa) within or into the Easement Area.

3.6.5 no wood, gasoline, propane or other combustible materials, barbecue grills, outdoor "pot belly" or other type of fireplaces, outdoor space heaters or dangerous chemicals of any kind shall be placed, stored or used within the Easement Area.

3.6.6 no shrubs, ground cover, landscape materials, perennial or annual flowers, or grasses of any type, sprinklers or irrigation system shall be placed or used within three (3) feet of any Residential Unit wall or common fence wall on the Burdened Lot, and no other activity shall be conducted within the Easement Area which does or might cause water to pool next to any such wall or which does or might otherwise damage, degrade or otherwise impair any such walls or the foundation of such Residential Unit.

3.6.7 no owner of a Burdened Lot or a Benefited Lot may modify in any way the grading design or the drainage patterns within the UBE Easement Area as constructed by Declarant.

3.6.8 the Benefited Lot Owner shall have the exclusive right to use the Easement Area on the Burdened Lot except as provided in this Declaration and the Burdened Lot Owner shall not block, obstruct or restrict access or use of or permit anyone to block, obstruct or restrict access or use of the Easement Area by the Owner of the Benefited Lot, or its Occupants, guests, invitees, licensees, agents or contractors or other Persons.

3.6.9 the Owner of the Burdened Lot (or such Owner's Occupants, agents or contractors) shall have the right, at reasonable times and on prior notice to the Owner of the Benefited Lot (except in the case of an emergency, where no such prior notice shall be required), and with as little interference with the activities and privacy of the Owner of the Benefited Lot and such Owner's Occupants and guests as is reasonably possible, to enter upon the Easement Area for purposes of painting, repairing, maintaining and inspecting the exterior wall and roof of the Residential Unit on such Burdened Lot, as well as periodic spraying for insects and other pests.

3.6.10 no tree shall be placed such that the center of such tree is within five (5) feet of any fence wall or exterior wall of a Residential Unit or other structure on either the Burdened Lot or the adjacent Benefited Lot.

3.6.11 neither the Owner of the applicable Benefited Lot nor such Owner's Occupants, guests, invitees, licensees, agents or contractors shall attach anything, either permanently or temporarily, to the exterior wall of the Residential Unit on the adjacent Burdened Lot, or do anything which would otherwise damage or alter such exterior wall or any fence wall attached thereto.

3.7 Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other improvement may be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Subdivision, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Subdivision is located.

### 3.8 Motor Vehicle Parking.

3.8.1 In addition to the parking restrictions in the Master Declaration, except for emergency vehicle access, parking of any Vehicle is prohibited within the private drives, as described and drawn on the Plat.

3.8.2 Except for emergency vehicle access, parking of any Vehicle is prohibited within the private street as described and drawn on the Plat, except as clearly marked by the Association or by the Board to permit such temporary parking in the Subdivision for a period of not more than twenty-four (24) hours.

3.9 Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building.

3.10 Basketball Goals. No basketball goal, backboard or similar structure or device, whether permanent or temporary, may be placed or constructed on any Lot.

3.11 Tanks. No tanks of any kind (including tanks for the storage of fuel) may be erected, placed or maintained on any Lot unless such tanks are buried underground.

3.12 Declarant's Exemption. Nothing contained in this Declaration may be construed to prevent the construction, installation or maintenance by the Declarant, any Declarant Affiliate or any agents or contractors thereof, during the period of development, construction and sales on the Property, of Improvements, landscaping or signs deemed necessary or convenient by the Declarant, in its sole discretion, to the development or sale of property within the Property, including, without limitation, construction trailers or offices, sales trailers or offices, model Residential Units of any kind (including, without limitation any used in whole or in part as sales offices), and parking related to any of the foregoing.

## ARTICLE 4

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

4.1 Formation of Subassociation. The Subassociation will be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, or Subassociation Rules, this Declaration will control. Further, in the event of any conflict or inconsistency between the Subdivision Documents and the Project Documents (as defined in the Master Declaration), then to the extent possible the stricter or more restrictive provision shall control; otherwise, the Project Documents shall control.

4.2 Board of Directors and Officers. The affairs of the Subassociation will be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Subdivision Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Subassociation will be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Subassociation and the Areas of Common Responsibility; the Board will determine the compensation to be paid to any such manager. During the Period of Declarant Control, the Declarant shall appoint, and may remove and replace, all members of the Board, who shall serve at the pleasure of Declarant. Thereafter, the members of the Board shall be elected by the Members at each annual meeting of Members (subject to the provisions of the Bylaws relating to filling of vacancies between annual meetings). Members of the Board elected after expiration or termination of the Period of Declarant Control will be elected for a one-year term, unless, by a duly-adopted

amendment to the Bylaws, the Members elect to establish a system of staggered terms for members of the Board (in which event the Bylaws, as so amended, shall govern the length of such terms).

4.3 Subassociation Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Common Area including, but not limited to, any recreational facilities situated upon the Common Area; (b) traffic and parking restrictions including speed limits on private streets and private drives within the Subdivision; (c) minimum standards for any maintenance of Common Area, and other property within the Subdivision; or (d) any other subject within the jurisdiction of the Subassociation. In the event of any conflict or inconsistency between the provisions of this Declaration and the Subassociation Rules, the provisions of this Declaration will prevail.

4.4 Personal Liability. No member of the Board, the Architectural Committee or any other committee of the Subassociation, no officer of the Subassociation and no manager or other employee of the Subassociation will be personally liable to any Member, or to any other Person including the Subassociation, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Subassociation, the Board or any member thereof, the Architectural Committee or any member thereof, the manager, any representative or employee of the Subassociation, any officer of the Subassociation or any member of any other committee of the Subassociation, but the limitations set forth in this Section will not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

4.6 Membership in the Subassociation. Every Owner of a Lot is a Member of the Subassociation, and the Declarant will be a Member of the Subassociation so long as it owns any part of the Subdivision (unless and until the Declarant expressly relinquishes in writing its status as a Member). Each such Owner will have the following number of Memberships in the Subassociation:

4.6.1 An Owner will have one (1) Membership for each Lot owned by that Owner.

4.6.2 If, at any time when the Declarant is a Member of the Subassociation but would have no Memberships pursuant to Section 4.6.1, the Declarant will nevertheless be deemed to have one (1) Membership, but the number of votes held by the Declarant will be determined pursuant to Section 4.7.

4.7 Votes in the Subassociation.

4.7.1 Each Owner other than the Declarant will be entitled to one (1) vote for each Membership held by such Owner.

4.7.2 Until the expiration or termination of the Period of Declarant Control, the Declarant will be entitled to the number of votes equal to Three Hundred Eighty-One (381) minus

the total number of outstanding votes held at the time by Owners other than the Declarant. After the expiration or termination of the Period of Declarant Control, the Declarant will have one (1) vote for each Membership held by the Declarant.

4.7.3 Until the expiration or termination of the Period of Declarant Control: (a) the Subassociation will be deemed to have two classes of Members, Class A and Class B; (b) the Declarant will be the Class B Member, and all votes held by the Declarant will be Class B votes; (c) all Owners other than Declarant will be Class A Members, and all votes held by such Owners will be Class A votes. Following expiration or termination of the Period of Declarant Control, the Subassociation will be deemed to have a single class of Members and votes (which may be referred to as Class A Members and Class A votes). Notwithstanding the foregoing, however, except as otherwise expressly provided in this Declaration or in any of the other Subdivision Documents, any issue put to a vote at a duly called meeting of Members at which a quorum is present will be decided by a simple majority of all Votes (as that term is defined in Articles 1), regardless whether such votes are otherwise deemed to be Class A votes or Class B votes.

4.8 Voting Procedures. A change in the ownership of a Lot will be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded; the Board must thereafter be given written notice of such change and provide satisfactory evidence thereof. The vote for each such Lot must be cast as a unit, and fractional votes will not be allowed. If a Lot is owned by two or more Persons and those Persons are unable to agree among themselves as to how the vote attributable to their Lot will be cast, they will lose their right to vote on the matter in question. If two or more Persons own a Lot and any one of those Persons casts a vote attributable to that Lot, it will thereafter be conclusively presumed for all purposes that he or she was acting with the authority and consent of all of the Persons who own that Lot unless any one of them object at the time the vote is cast, and if more than one such Person attempts to cast the vote or votes for that Lot, the vote or votes for that Lot will be deemed void and will not be counted.

4.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer will be void. Any transfer of ownership of a Lot will automatically transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot must notify the Subassociation of his, her or its purchase of a Lot. The Subassociation may require the Purchaser of a Lot to pay to the Subassociation a transfer fee in an amount to be set by the Board, and any such transfer fee will be secured by the Assessment Lien.

4.10 Maintenance of Private Streets and Private Drives/Landscaping. The Subassociation shall repair and maintain the private drives and the private streets shown on the Plat, and shall be responsible for maintenance of any area over which: (i) the Subassociation assumes the responsibility in writing; (ii) the Subassociation assumes the responsibility as described in Article 3; (iii) the Subassociation has been given such responsibility by a Recorded instrument executed by the Declarant during the Period of Declarant Control; or (iv) the Master Association or the City or any other municipality or other governmental agency or entity having jurisdiction over such

property assumes responsibility, for so long as the Master Association or the City or such other municipality or other governmental agency or entity assumes or has responsibility. Treated effluent may be used by the Subassociation to irrigate all or portions of the Areas of Common Responsibility.

#### 4.11 Bulk Service Agreements.

4.11.1 The Board, acting on behalf of the Subassociation, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots, Parcels or both within the Property, or within one or more portions thereof, services, including, without limitation, electronic services (cable television, community satellite television, high speed Internet, security monitoring, data, communication or security services), wastewater and water services, fire protection, pest control, trash collection, and recycling collection (individually or collectively "Bulk Service(s)": (a) which might not otherwise be generally available to such Owners and Occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

4.11.2 If all Lots and Parcels within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Subassociation's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Subassociation's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly). If not all Lots and Parcels within the Property will be served by a particular Bulk Service Agreement the Board shall have only the billing option described in clause (b) above.

4.11.3 The Declarant, for each Lot and Parcel, hereby covenants and agrees, and each Owner other than the Declarant, by becoming the Owner of a Lot or Parcel, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot or Parcel) by the Board pursuant to this Section 4.11, and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots or Parcels against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Subassociation in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot or Parcel at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

4.11.4 No Owner of a Lot or Parcel covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot or Parcel under this Section 4.11, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot or Parcel upon which no Residential Unit or other building has been completed.

4.11.5 "Bulk Provider" means a private, public or quasi-public utility or other company which provides, or proposes to provide any Bulk Service(s) (as defined above) to Lots, Parcels or both within the Property, or within one or more portions thereof, pursuant to a "Bulk Service Agreement" (as defined below).

4.11.6 "Bulk Service Agreement" means an agreement between the Subassociation and a Bulk Provider pursuant to which the Bulk Provider would provide any Bulk Service(s) to Lots, Parcels or both with the Property, or within one or more portions therof.

## ARTICLE 5

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

5.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Subassociation in accordance with this Declaration. All Assessments will be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Subassociation in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, will be a charge on the Lot and will be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys fees, incurred by the Subassociation in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, will also be the personal obligation of each Person who was an Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments will not pass to the successors in title of the Owner unless expressly assumed by them (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title). Any Assessment established and collected by the Subassociation pursuant to this Declaration shall be in addition to, and not in replacement of or substitution for, any assessment established and collected by the Master Association, as set forth in the Centerra Master Documents.

5.2 Annual Assessment. In order to provide for the operation and management of the Subassociation and to provide funds for the Subassociation to pay all Common Expenses and to perform its duties and obligations under the Centerra Master Documents (if any) and the Subdivision Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each Assessment Period beginning

with the fiscal year ending December 31, 2007, will assess an Annual Assessment against each Lot which is Assessable Property, which shall be determined in accordance with Section 5.3. Except as otherwise provided in Section 5.15, Annual Assessments shall be assessed equally against all Lots.

**5.3 Computation of Assessments; Annual Budget.** The Board shall prepare and adopt an estimated annual budget for each fiscal year of the Subassociation, which annual budget shall serve as the basis for determining the Annual Assessments for the applicable fiscal year (subject to the limitations of Section 5.4 hereof). Such budget shall take into account the estimated Common Expenses and cash requirements of the Subassociation for the year. The annual budget shall also take into account the estimated net available cash income for the year, if any, from the operation or use of any of the Common Area. The annual budget shall also provide for a reserve for contingencies for the year (and for subsequent fiscal years) and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board, taking into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause to be delivered or mailed to each Owner a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot for the fiscal year in question. 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 Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Subject to the provisions of this Section 5.3 and of Sections 5.4 and 5.5, neither the annual budget (nor any amended budget) adopted by the Board, nor any Assessment levied pursuant thereto, shall be required to be ratified or approved by the Owners. If, at any time during a fiscal year of the Subassociation the Board deems it necessary to amend the budget for such year, the Board may do so and may levy an additional Annual Assessment for such year (subject to the limitations imposed by Section 5.4) or may call a meeting of the Members to request that the Members approve a Special Assessment pursuant to Section 5.5. Within sixty (60) days after adoption of the amended budget (if the Board elects to levy an additional Annual Assessment), the Board shall cause a copy of the amended budget and a statement of the additional Annual Assessments to be levied against the Lots to be delivered or mailed to each Owner; if, instead, the Board elects to call a meeting of Members to seek approval of a Special Assessment, the Board shall cause a copy of the amended budget proposed by the Board to be delivered or mailed to each Owner with the notice of such meeting, and if a Special Assessment is duly approved by the Members at such meeting, shall cause a statement of the Special Assessment to be levied against each Lot to be promptly mailed or delivered to each Owner.

**5.4 Maximum Annual Assessment.** The Annual Assessments provided for herein shall not at any time exceed the Maximum Annual Assessment, as determined in accordance with this Section 5.4. For the fiscal year ending December 31, 2007, the Maximum Annual Assessment shall be One Thousand Eighty and 00/100 Dollars (\$1,080.00) for each Lot. Thereafter, unless a greater increase is approved by the affirmative vote of two-thirds (2/3) of the Votes (as that term is defined in Article 1) of each class of Members, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S.

Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, in the index most similar in composition to such index; or (b) ten percent (10%). 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 the Declaration to be maintained by the Subassociation; or (ii) charges for utility services necessary to the Subassociation's performance of its obligations under this Declaration, in either case (i) or (ii) notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is at a rate greater than otherwise permitted under the preceding sentence. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in the full amount of the Maximum Annual Assessment for such fiscal year, and the election by the Board not to levy Annual Assessments in the full amount of the Maximum Annual Assessments for any fiscal year shall not prevent the Board from levying Annual Assessments in subsequent fiscal years in the full amount of the Maximum Annual Assessment for such subsequent fiscal year (as determined in accordance with this Section 5.4). In the event that, for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the Maximum Annual Assessment for such fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during said fiscal year so long as the total of the Annual Assessments levied during said fiscal year does not exceed the Maximum Annual Assessment for such fiscal year.

**5.5 Special Assessments.** The Subassociation may levy against each Lot which is Assessable Property, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Improvements upon the Common Area (or Improvements for which the Subassociation is responsible or other Areas of Common Responsibility), including fixtures and personal property related thereto, but any Special Assessment must be approved, at a meeting duly called for such purpose, by at least two-thirds (2/3) of the Votes (as that term is defined in Article 1), in each Class of Members.

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

**5.7 Rules Regarding Billing and Collection Procedures.** Annual Assessments will be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board has the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, but those rules and regulations must not be inconsistent with the provisions of this Declaration. The failure of the Subassociation to send a bill to a Member will not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor will not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Subassociation is under no duty to refund any payments received by it even though the ownership of a Lot changes during an

Assessment Period; successor Owners of Lots will be given credit for prepayments, on a prorated basis, made by prior Owners.

**5.8 Effect of Nonpayment of Assessments; Remedies of the Subassociation.**

5.8.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due will bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due.

5.8.2 The Subassociation will have a lien on each Lot for all Assessments levied against the Lot and for all other fees and charges payable to the Subassociation by the Owner of the Lot pursuant to this Declaration. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Subassociation may, at its option, Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Subassociation, the legal description or street address of the Lot against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees and reasonable attorneys' fees.

5.8.3 The Assessment Lien will have priority over all liens or claims except for: (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental body; and (c) the lien of any First Mortgage.

5.8.4 The Subassociation will not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Subassociation by the Owner of the Lot have been paid in full.

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

5.9 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Subassociation, within a reasonable period of time thereafter, will issue to such Member or other Person a written certificate stating: (a) that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Subassociation may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, will be

conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or tender on, the Lot in question.

**5.10 Purposes for Which Subassociation's Funds May be Used.** The Subassociation will apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Subdivision and the Owners and Occupants 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 Subdivision, which may be necessary, desirable or beneficial to the general common interests of the Subdivision, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Subassociation may seek to aid, promote and provide for such common benefit: social interaction among Members and Occupants, maintenance of landscaping on Common Area and public right-of-way and drainage areas within the Subdivision, construction, operation and maintenance of recreational and other facilities on Common Area, recreation, insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Subassociation, employment of professional managers, and hiring professional consultants such as architects, engineers, attorneys and accountants.

**5.11 Surplus Funds.** The Subassociation is not obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Subassociation is not obligated to reduce the amount of the Assessment in the succeeding year if a surplus exists from a prior year, and the Subassociation 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 Subassociation and the accomplishment of its purposes.

**5.12 Working Capital Fund.** To insure that the Subassociation will have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Subassociation immediately upon becoming the Owner of the Lot a sum equal to one-quarter (1/4th) of the current Annual Assessment for the Lot. Funds paid to the Subassociation pursuant to this Section may be used by the Subassociation for payment of operating expenses or any other purpose permitted under the Subdivision Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Subassociation pursuant to this Declaration.

**5.13 Transfer Fee.** Each Purchaser of a Lot must pay to the Subassociation immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board.

**5.14 Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments.** Notwithstanding any other provision hereof or of the Articles, Bylaws or Subassociation Rules, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment, as required by Section 5.5 hereof; or (b) approving any increase in the Maximum Membership Assessment greater than that permitted by

Section 5.4, must be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in the Maximum Membership Assessment, a quorum will consist of sixty percent (60%) of the Votes (as that term is defined in Article 1) in each class of Members, but if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting will be one-half (1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

**5.15 Common Expenses Resulting from Misconduct.** Notwithstanding any other provision of this Article 5, if any Common Expense is caused by the misconduct of any Owner (or of any Occupant, tenant, employee, servant, agent, guest or invitee for whose actions such Owner is responsible under applicable law), the Subassociation may assess that Common Expense exclusively against such Owner and such Owner's Lot, which amount (together with any and all costs and expenses, including but not limited to attorneys' fees, incurred by the Subassociation in recovering the same) shall be secured by the lien created pursuant to Section 5.1.

**5.16 Declarant's Exemption.** Notwithstanding any other provision of this Declaration to the contrary, no Annual Assessment will be levied against Lots owned by the Declarant. During the Period of Declarant Control, the Declarant will subsidize the Subassociation for the amount by which (a) the cost of operating and administering the Subassociation and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies exceeds (b) the total amount of Assessments levied against Lots owned by Owners other than the Declarant. The subsidy required of Declarant under this Section 5.16 may be in the form of cash or in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any subsidies made by Declarant in the form of "in-kind" contributions of goods or services will be valued at the fair market value of the goods or services contributed. Declarant will make payments or contributions in respect of its subsidy obligations under this Section 5.16 at such times as the Board may reasonably request from time to time (but will not be required to make such payments or contributions more often than monthly); at the end of each fiscal year of the Subassociation, either: (1) Declarant will pay or contribute to the Subassociation such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by Declarant during such fiscal year, to satisfy in full Declarant's subsidy obligations under this Section 5.16 for such fiscal year; or (2) the Subassociation will pay to Declarant or credit against Declarant's subsidy obligation for the immediately following fiscal year, as Declarant may elect, the amount, if any, by which the total of all payments or contributions paid or made by Declarant during such fiscal year exceeded the total subsidy obligation of Declarant for such fiscal year under this Section 5.16.

**5.17 Notices.** Except as otherwise provided in this Article 5, notices required or permitted by this Article 5 to be given to Owners or Members shall be deemed sufficiently given to an Owner or Member if hand-delivered to such Owner or Member, or if sent by United States mail, postage paid, addressed to such Owner or Member at the mailing address of such Owner's or Member's Lot or, if applicable, at such different mailing address as such Owner or Member shall have previously designated in writing to the Subassociation's President or Secretary. If any such notice is addressed and mailed in accordance with the preceding sentence, it shall be

deemed properly given when deposited in the mail, notwithstanding any subsequent failure of the addressee to receive the same.

## ARTICLE 6

### MAINTENANCE

#### 6.1 Common Area and Public Right of Way.

6.1.1 Subject to Section 6.1.3, the Subassociation, or its duly delegated representative, will manage, maintain, repair and replace the Common Area and all Improvements located thereon (and all other Areas of Common Responsibility and Improvements thereon for which the Subassociation is responsible), except the Subassociation will not be obligated to maintain areas which the Master Association, any governmental entity or any utility company is maintaining or is obligated to maintain. Until such time as the Subassociation has been incorporated, the Declarant will maintain any Common Area and any Improvements thereon (including, without limitation, any and all private streets, private drives, private sidewalks, signage and street lighting); after incorporation of the Subassociation, the Subassociation will be responsible therefor (subject to the open provisions of this Declaration).

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

6.1.3 Except as set forth in Section 6.1.3.1 below, if any subdivision plat, this Declaration or any other Recorded instrument permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Area, other Areas of Common Responsibility or public right-of-way areas, the Board will have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants for the Subassociation 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 Subassociation to contract to provide maintenance service to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Subassociation and Owner may agree upon.

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

### 6.3 CBUs and Mailboxes.

6.3.1 If required or requested by the USPS, or if Declarant or the Subassociation deems it necessary or appropriate, Declarant or the Subassociation may install one or more CBUs within or adjacent to the Property for purposes of providing mail delivery service to Owners and Occupants of Lots within the Property. Unless required by the USPS, Declarant or the Subassociation may elect not to install CBUs at all or, if CBUs are installed, those installed CBUs may serve fewer than all Lots within the Property (and the Owners and Occupants thereof); any Owner or Occupant not served by a CBU shall be responsible for installing (if not already installed) and maintaining an individual Mailbox on his, her or its Lot or on a single post shared by two adjacent Lots and the Owners and Occupants thereof, in accordance with the rules and regulations of the USPS and the Subassociation Rules. Any CBU shall be deemed an Improvement, and except as otherwise provided in this Declaration, shall be deemed to be a part of the Areas of Common Responsibility. The Subassociation shall be responsible for managing, maintaining, repairing and replacing any CBU, with the costs thereof to be a Common Expense, except as otherwise provided in this Declaration, and the USPS shall have an easement over, across, upon and through the Common Areas a necessary to access any CBUs. The Subassociation may retain the services of a mailbox contractor or other agent or independent contractor for purposes of performing some or all of such duties. For safety and security reasons, no management, maintenance, repair or replacement of any CBU shall be performed by any person or entity other than the Subassociation or its designated mailbox contractor, agent or independent contractor. In no event shall more than one Mailbox in a CBU be assigned or allocated to a single Lot, regardless of the number of Occupants thereof. Likewise, any Mailbox not contained within a CBU shall be deemed an Improvement and shall be maintained, repaired and otherwise kept in good condition and repair in accordance with rules and regulations of the USPS and with the provisions of this Declaration and the Subassociation Rules; in the case of an individual Mailbox situated entirely on and serving any Owner or Occupant of a single Lot, the Owner of such Lot shall be responsible therefor, and in the case of an individual Mailbox situated as a pair of Mailboxes on a single post shared between the adjacent Lots, the Owner of the Lot to which the individual Mailbox is assigned shall be responsible therefor, and the Owners of the two adjacent Lots served by the Mailboxes on such single post shall be jointly responsible for such post and related supports and the like, provided, however, that if either such Owner (or any of such Owner's Occupants or any other Persons for whom such Owner is legally responsible) causes any damage to such post or related supports and the like, or to the other Mailbox on such post assigned to the adjacent Lot, such Owner shall be responsible, at such Owner's costs and expense, for making all necessary repairs and replacements (and the Owners of each of such Lots, shall have the right to enter upon the other such Lot to the limited extent personally necessary to make any necessary repairs or replacements, and to use its mailbox).

6.3.2 Generally, the key(s) to a Mailbox (whether or not contained in a CBU) will be delivered either by the USPS or by the Subassociation, or its duly delegated representative, to the first retail purchaser of a Lot from the Declarant. Subject to any rules or regulations adopted from time to time by the USPS, and subject to any Subassociation Rules, upon subsequent transfers of ownership or occupancy rights with respect to any Lot, the parties to such transfer shall be responsible for arranging for the transfer of any and all keys to the Mailbox assigned to such Lot. Neither Declarant nor the Subassociation shall have any

responsibility for any such subsequent transfers of keys, failure to transfer keys, or misdelivery or theft of mail resulting from subsequent transfers of keys or failure to transfer keys.

6.3.3 Each Owner shall be responsible for reporting to the Subassociation any lost or damaged keys to the CBU Mailbox assigned to such Owner's Lot. Owner shall bear any and all costs of obtaining a replacement key, rekeying of the Owner's CBU Mailbox, and any necessary related repairs to the CBU. No locksmith or other person (including, without limitation, the Owner of the Lot to which the CBU Mailbox at issue is assigned), other than the Subassociation or its designated mailbox contractor, agent or other independent contractor shall do any work on or with respect to the CBU or any Mailbox therein, including, without limitation, rekeying any CBU Mailbox, making replacement or additional keys for any CBU Mailbox, or repairing or servicing the CBU or any Mailbox therein.

6.3.4 For the security of all Owners and Occupants, each Owner shall report promptly to the Subassociation and to the USPS any and all mail theft discovered by such Owner and any vandalism or other damage to the Owner's CBU Mailbox or to the CBU to the USPS and to the Subassociation. Unless resulting from the gross negligence or willful misconduct of the Subassociation, the Subassociation shall have no responsibility for any mail theft or misdelivery of mail, nor shall the Subassociation have any responsibility with respect to vandalism or other damage to an Owner's CBU Mailbox or to the CBU unless such vandalism or other damage has been reported to the Subassociation, and then the Subassociation's responsibility shall be limited to repair or replacement as necessary, in the Subassociation's sole discretion (but subject to applicable USPS rules and regulations), to restore the CBU and any applicable CBU Mailbox to its condition immediately prior to the vandalism or other damage. To the extent that the need for any repair, replacement, maintenance or other work is attributable to the actions of any particular Owner or Occupant, the Subassociation may, in its sole discretion, seek to recover from such Owner (or the Owner of such Occupant's Lot) all costs suffered or incurred by the Subassociation in performing such repair, replacement, maintenance or other work, which costs shall bear interest at the rate of twelve percent (12%) per annum from the date incurred by the Subassociation until such costs and interest have been fully repaid by the applicable Owner (or Occupant), and which costs and interest shall be secured by the Assessment Lien against the applicable Owner's Lot.

6.4 Refuse Collection. Solid waste collections will not be collected curbside at any Residential Unit. This includes refuse and recycling deposited in containers, uncontained bulk collection, and Household Hazardous Waste ("HHW"). All containers of refuse, including containers of recycling refuse (collectively "Containers"), must be placed at the appropriate Subassociation-designated collection areas ("Collection Areas") before 6:00 a.m. on the assigned collection day and all Containers must be removed from the Collection Areas by 6:00 a.m. the following day. The Collection Areas shall be located on Subassociation-designated trash pads adjacent to the Loop Road. Lot Owners with a Subassociation-designated Collection Area on or adjacent to such Owner's Lot shall allow reasonable access to other Lot Owners to deposit and remove Containers on the Collection Areas on the assigned collection day at the times prescribed above, except that Containers may be deposited on a Subassociation-designated Collection Area by Lot Owners no earlier than 6:00 p.m. on the day immediately preceding the assigned collection day. Containers must be spaced at a minimum of two feet (2') apart to qualify for collection. All uncontained trash, such as but not limited to, furniture, appliances, branches and

other landscape refuse, shall also be placed at the Collection Area no earlier than 6:00 p.m. on the day immediately preceding the assigned collection day. The City will not be responsible for any Container spillage at any Collection Area caused by inclement weather, Container overflow, or material misplacement. Any uncontained items and small debris measuring less than one inch (1") in length must be bagged and placed at the Collection Area to qualify for collection. Any uncontained small debris that is less than one inch (1") in length that remains at any Collection Area subsequent to any uncontained collection will not be removed by the City or its collection crews. Removal of such unbagged and uncontained small debris shall be the responsibility of the Subassociation. HHW materials shall only be accepted at scheduled HHW events conducted by the City.

## ARTICLE 7

### INSURANCE

7.1 Scope of Coverage. Beginning not later than the time of the first conveyance of a Lot to a Purchaser, the Subassociation must maintain, to the extent reasonably available, the following insurance coverage:

7.1.1 Property insurance on the Common Area, and any other property which the Subassociation owns or is required to maintain, repair, replace, restore or insure, insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the insured property, as determined by the Board, but the total amount of insurance must not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

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

7.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of applicable law;

7.1.4 Such other insurance as the Board determines from time to time to be appropriate to protect the Subassociation or the Owners;

7.1.5 Each insurance policy purchased by the Subassociation must, to the extent reasonably available, contain the following provisions:

(a) The insurer issuing such policy will have no rights of subrogation with respect to claims against the Subassociation or its agents, servants or employees, or with respect to claims against Owners or Occupants;

(b) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Subassociation, will void the policy or adversely affect recovery on the policy;

(c) The coverage afforded by such policy will not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

(d) A "severability of interest" endorsement which precludes the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Subassociation or other Owners or Occupants;

(e) A statement naming the Subassociation as the insured;

(f) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier must notify any Mortgagee named in the policy at least ten (10) days before the effective date of any substantial modification, reduction or cancellation of the policy.

7.2 Certificates of Insurance. An insurer which has issued an insurance policy under this Article will be required to issue a certificate or a memorandum of insurance to the Subassociation and, upon request, to any Owner or Mortgagee, and will be required to agree that any insurance it issues to the Subassociation may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Subassociation and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

7.3 Payment of Premiums. The premiums for any insurance obtained by the Subassociation pursuant to this Declaration will be included in the budget of the Subassociation and will be paid by the Subassociation.

7.4 Payment of Insurance Proceeds. With respect to any loss to the Common Area or other property covered by property insurance obtained by the Subassociation, the loss must be adjusted with the Subassociation, and the insurance proceeds will be payable to the Subassociation and not to any Mortgagee. Subject to the provisions of Section 7.5, the proceeds will be disbursed for the repair or restoration of the damage to the Common Area.

7.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area or other property covered by property insurance obtained by the Subassociation which is damaged or destroyed must be repaired or replaced promptly by the Subassociation unless (a) repair or replacement would be illegal under any state or local health, safety or other statute or ordinance, or (b) Owners representing at least eighty percent (80%) of the total votes in the Subassociation vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and available reserves will be paid by the Subassociation. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area will be used to restore the damaged area to a condition which is not in violation of any state or local health or

safety statute or ordinance and the remainder of the proceeds will either: (i) be retained by the Subassociation as an additional capital reserve; or (ii) be used for payment of operating expenses of the Subassociation if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Subassociation.

## ARTICLE 8

### GENERAL PROVISIONS

8.1 Enforcement. The Subassociation, any Owner, or the Master Association has the right to enforce the Subdivision Documents. Further, and without limiting any other enforcement rights available to the Subassociation under the Subdivision Documents or applicable law, if any Owner fails to perform any maintenance, repair or other obligation imposed on such owner by this Declaration, the Subassociation may, at the option of the Board, perform such maintenance, repair or other obligation on behalf of such Owner, and in such event such Owner shall, immediately upon written demand, pay the Subassociation all costs and expenses incurred or expended by the Subassociation in doing so, plus interest, at the rate determined in accordance with Section 5.8.1, from the date of such demand until all such amounts are fully paid, and all such amounts (including such interest) shall be secured by the Assessment Lien.

8.2 Term; Method of Termination. Unless terminated in accordance with this Section, this Declaration (as amended from time to time) will continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded, after which time this Declaration will be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Members holding ninety percent (90%) or more of the votes in the Subassociation. If the necessary votes and consents are obtained, the Board will cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Subassociation, with their signatures acknowledged. Thereupon this Declaration will have no further force and effect, and the Subassociation will be dissolved pursuant to applicable law.

8.3 Amendments.

8.3.1 This Declaration may be amended at any time and from time to time during the original term of this Declaration or any extensions of that term, but, except for amendments made pursuant to Subsections 8.3.2 or 8.3.3 of this Declaration, this Declaration may only be amended by a Recorded instrument approved by at least two-thirds (2/3) of the Lots.

8.3.2 Either the Board or the Declarant may amend this Declaration, without obtaining the approval or consent of any Owner, Mortgagee or other Person, in order to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Subassociation, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Subdivision or the Subdivision Documents is required by law or requested by the Declarant.

8.3.3 So long as the Declarant and/or one or more Declarant Affiliates own, in the aggregate, fee title to at least two-thirds (2/3) of the Lots, the Declarant may amend this Declaration without the consent or approval of any other Owner or other Person. Any amendment made by the Declarant pursuant to this Subsection 8.3.3 must be executed by the Declarant and must be Recorded.

8.3.4 So long as the Declarant or any Declarant Affiliate owns any Lot or other portion of the Property, no amendment to this Declaration will be effective unless approved in writing by the Declarant (or unless the Declarant expressly waives in writing its right to approve such amendments), and such amendment is approved and consented to by the Master Association prior to recordation.

8.3.5 Any amendment approved pursuant to Subsection 8.3.1 of this Declaration or by the Board pursuant to Subsection 8.3.2 of this Declaration must be signed by the President or Vice President of the Subassociation and must be Recorded. Any such amendment must certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsections 8.3.2 or 8.3.3 of this Declaration must be executed by the Declarant and must be Recorded. Any amendment approved pursuant to Subsections 8.3.1, 8.3.2 or 8.3.3 must also be approved by and consented to by the Master Association prior to Recordation.

8.4 Interpretation. Except for judicial construction, the Subassociation has the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Subassociation's construction or interpretation of the provisions hereof will be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

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

8.6 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration are determined by a court of competent jurisdiction (upheld on appeal) to be unlawful, void or voidable for violation of the rule against perpetuities, then the covenants, conditions, restrictions or other provisions so determined to be unlawful, void or voidable will continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

8.7 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances will operate to extinguish, terminate or modify any of the provisions of this Declaration.

8.8 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Subassociation has the right to adopt, as part of the Subassociation Rules, additional rules and regulations with respect to any other aspects of the Subassociation's rights, activities and duties, provided said additional rules and

regulations do not conflict with the provisions of the other Subdivision Documents or the Association Rules (as defined in the Master Declaration).

8.9 Laws, Ordinances and Regulations.

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

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

8.10 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Subdivision may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration, but whether or not any such reference is made in any deed or instrument, each and all of the provisions of this Declaration are and will be binding upon the grantee-Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

8.11 Gender and Number. Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders includes each of the other genders, words in the singular include the plural, and words in the plural include the singular.

8.12 Captions and Title; Section References; Exhibits. 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 meaning or intent thereof. References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, will be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

8.13 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, the Centerra Master Documents, the Subdivision Documents or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified in the Subdivision Documents or in the resolution of the Board, or unless otherwise required by law, such notice requirement will be deemed satisfied if notice of such action, proposed action or meeting is published once in any newspaper in general circulation within Maricopa County. This Section will not be construed to require that any notice be given if not otherwise required and will not prohibit satisfaction of any notice requirement in any other manner.

8.14 Indemnification. The Subassociation will indemnify each and every officer and director of the Subassociation and each and every member of any committee appointed by the

Board (including, for purposes of this Section, former officers and directors of the Subassociation and former members of committees appointed by the Board) (collectively, "Subassociation Officials" and individually an "Subassociation Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Subassociation Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Subassociation Official, except for his or her own individual willful misfeasance, malfeasance, misconduct or bad faith. No Subassociation Official will have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Subassociation (except indirectly to the extent that such Subassociation Official may also be a Member of the Subassociation and therefore subject to Assessments hereunder to fund a liability of the Subassociation), and the Subassociation will indemnify and forever hold each such Subassociation Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein is not exclusive of any other rights to which any Subassociation Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Subassociation may advance funds to or for the benefit of any Subassociation Official who may be entitled to indemnification hereunder to enable such Subassociation Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Subassociation Official by reason of his or her being, or having been, an Subassociation Official. In the event it is ultimately determined that an Subassociation Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 8.14 or otherwise under the Articles, Bylaws or applicable law, such Subassociation Official must promptly upon demand repay to the Subassociation the total of such funds advanced by the Subassociation to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

8.15 No Partition. No Person acquiring any interest in the Property or any part thereof will have a right to, nor may any person seek, any judicial partition of the Common Area, nor will any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Area or any funds or other assets of the Subassociation except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section must not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area, which is subject to Section 4.1) which may or may not be subject to this Declaration.

8.16 Property Held in Trust. Except as otherwise expressly provided in this Declaration, any and all portions of the Property which are now or hereafter held in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is the Declarant or a Declarant Affiliate, will be deemed for all purposes under this Declaration to be owned by the Declarant or such Declarant Affiliate, as applicable, and will be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by the Declarant or such Declarant Affiliate, as applicable. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by the Declarant or any such Declarant Affiliate to any such trust (or the trustee thereof) or to the Declarant or any such Declarant Affiliate

by any such trust (or the trustee thereof) will be deemed for purposes of this Declaration to be a sale of such property or any right, title or interest therein.

8.17 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days will be counted including Saturdays, Sundays and holidays, but if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

8.18 Notice of Violation. The Subassociation has the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Subdivision Documents. The notice must be executed and acknowledged by an officer of the Subassociation and must contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Subassociation pursuant to this Declaration; (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation; and (f) any other information required by applicable law. Recordation of a notice of violation will serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Subassociation that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Subassociation will Record a notice of compliance which will state the legal description of the Lot against which the notice of violation was recorded, the Recording data of the notice of violation, and will state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Subassociation to Record a notice of violation will not constitute a waiver of any existing violation or evidence that no violation exists.

8.19 Disclaimer of Representations. Notwithstanding anything to the contrary herein, neither the Declarant nor any Declarant Affiliate makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Subdivision can or will be carried out, or that any real property now owned or hereafter acquired by the Declarant or by any Declarant Affiliate is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) 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 neither the Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither the Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants assumes all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold the Declarant and all Declarant Affiliates harmless therefrom.

8.20 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon the Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) may be modified, amended or revoked

in any way, so long as the Declarant, any Declarant Affiliate or a trustee for the benefit of the Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of the Declarant.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

RICHMOND AMERICAN HOMES OF ARIZONA,  
INC., a Delaware corporation

By MRJL

Its VP LAND ACQUISITION

STATE OF ARIZONA )  
                          )  
                          ss.  
County of Maricopa )

Acknowledged before me this 5<sup>th</sup> day of January, 2006, by  
Michael J. Palmer, the Vice President of Land Acquisition of Richmond  
American Homes of Arizona, Inc., a Delaware corporation, on behalf of such entity.

Monalisa Amparan  
Notary Public

My Commission Expires:



MONALISA AMPARAN  
Notary Public - Arizona  
Maricopa County  
Expires 06/30/10

6/30/10

## CONSENT OF CENTERRA HOMEOWNERS ASSOCIATION

CENTERRA HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation (the "Master Association"), acting by and through its Board of Directors, hereby approves of the foregoing Declaration, and declares that: (i) the foregoing Declaration shall be subject and subordinate in all respects to the provisions of the Master Declaration, the Association Rules (as defined in the Master Declaration), and the articles of incorporation and bylaws of the Master Association (collectively, the "Centerra Master Documents"), and in the event of any conflict or inconsistency between the terms or provisions of the foregoing Declaration and the terms or provisions of the Centerra Master Documents, the Centerra Master Documents shall control unless the conflicting or inconsistent provision in the foregoing Declaration is more restrictive; and (ii) the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to the Centerra Master Documents and to the jurisdiction of the Master Association, and further subject to any applicable Tract Declaration(s) and Supplemental Declaration(s) Recorded prior to the Recordation of the foregoing Declaration.

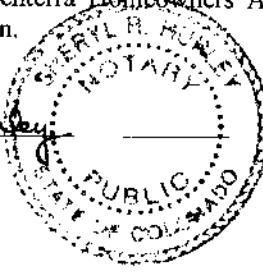
CENTERRA HOMEOWNERS ASSOCIATION, an  
Arizona non-profit corporation

By: Toni Serra  
Its: Treasurer

STATE OF Arizona )  
City of Denver ) ss  
County of Maricopa )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of January, 2007,  
by Toni Serra the Treasurer of Centerra Homeowners Association, an  
Arizona non-profit corporation, on behalf of the corporation.

Sherry R. Hanley  
Notary Public



My Commission expires:

My Commission Expires  
June 15, 2007

RECORDING REQUESTED BY  
FIRST AMERICAN TITLE COMPANY  
NATIONAL/COMMERCIAL SERVICES  
COMMERCIAL/INDUSTRIAL DIVISION

NSB-534584-DB  
Recording Requested By and  
When Recorded Return To:

Cox, Castle & Nicholson LLP  
2049 Century Park E., 28th Fl.  
Los Angeles, California 90067  
Attn: Amy H. Wells, Esq.

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20130436224 05/13/2013 02:07  
ELECTRONIC RECORDING

1368477739419-4-2-1--  
sarabiam

(Space Above This Line For Recorder's Use)

### **FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this “**Amendment**”) is made as of December 14, 2012, by and between Fairfield Goodyear LLC, a Delaware limited liability company (“**Owner**”), and the Centerra Homeowners’ Association (the “**Association**”). All capitalized terms not otherwise defined herein shall have the meaning given such terms in the “Declaration” (as herein defined).

#### **RECITALS**

A. Owner is the owner of that certain real property located in the City of Goodyear, County of Maricopa, State of Arizona (the “**Covered Parcel**”), more particularly described on Exhibit A attached to that certain Declaration of Covenants, Conditions and Restrictions dated September 14, 2006, and recorded as Instrument 20061225721, in the Official Records of Maricopa County, Arizona on September 14, 2006 (the “**Declaration**”) and incorporated herein by this reference.

B. The Declaration contains certain declarations, limitations, easements, restrictions, covenants and conditions affecting the Covered Parcel.

C. Section 8.1 of the Declaration provides that the Declaration may be amended upon the unanimous written consent of the owners of the Covered Parcel and the prior written consent of the Board of the Association and Centerra, LLC, an Arizona limited liability company (“**Declarant**”), “Declarant” under the Declaration, for so long as Declarant is a Class B Member of the Association.

D. Declarant is no longer a Class B Member of the Association.

E. Owner desires to amend the Declaration to provide for such changes to the Declaration as hereinafter set forth and Association desires to consent to such amendment as required pursuant to Section 8.1 of the Declaration.

## TERMS

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The first sentence of Section 3.2.B of the Declaration is hereby deleted in its entirety and replaced with the following:

“The Lien shall have priority over all liens, interests and encumbrances on the Property except for: (i) liens and encumbrances recorded before recordation of the Covenants; (ii) liens for real estate taxes and other governmental assessments or charges against the Property; and (iii) the lien of any existing or future recorded first mortgage or deed of trust on the Property.”

2. The fourth sentence of Section 3.2.B of the Declaration is hereby amended as follows (addition in CAPS):

“Any person acquiring title to or coming into possession of the Property through purchase at a foreclosure sale or trustee’s sale OF A FIRST MORTGAGE OR DEED OF TRUST, or through any equivalent proceeding shall acquire title free and clear of any claims for Owner’s unpaid Assessments that became payable prior to the acquisition of the Property by such person.”

3. **Entire Agreement.** This Amendment contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose. Nothing in this Amendment shall be deemed to waive or modify any of the provisions of the Declaration, except as expressly stated herein.

4. **Effect of Amendment.** In the event any of the terms of the Declaration conflict with the terms of this Amendment, the terms of this Amendment shall control. Except as to be amended hereby, all terms and conditions of the Declaration shall remain in full force and effect, and the parties hereto hereby ratify and confirm the Declaration as amended hereby.

5. **Miscellaneous.** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The parties hereto agree that the signature of any party transmitted by facsimile with confirmation of transmission shall have binding effect as though such signature were delivered as an original.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Declaration of Covenants, Conditions and Restrictions as of the day and year first above written.

"Owner"

**FAIRFIELD GOODYEAR LLC,**  
a Delaware limited liability company

By: FF California Housing Fund, LLC,  
a Delaware limited liability company, Manager

By: FF Properties, Inc.,  
a Delaware corporation, Manager

By:   
Andrew Hinkelman  
President

STATE OF CALIFORNIA  
COUNTY OF Denver

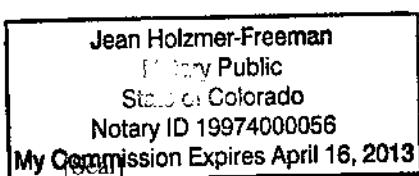
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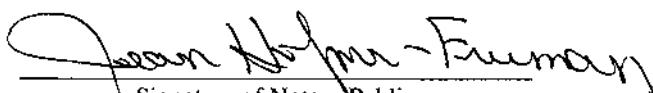
ss:

On December 14, 2012 before me, Jean Holzmer-Freeman, Notary Public, personally appeared Andrew Hinkelman, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.





Signature of Notary Public

{Signatures continued on next page}

Association, by its execution below, hereby consents to the foregoing First Amendment to Declaration of Covenants, Conditions and Restrictions as of the date and year first above written, and attests that this consent has been approved by the Board of Directors of the Association at a duly-called meeting with a quorum present or by unanimous written consent in lieu thereof.

"Association"

CENTERRA HOMEOWNERS' ASSOCIATION,  
an Arizona non-profit corporation

By: *Charles F. McErlean Jr.*  
Name: *CHARLES F. MCERLEAN, JR.*  
Its: *SECRETARY & TREASURER*

STATE OF ARIZONA )  
 ) ss:  
COUNTY OF MARICOPA )

On January 23, 2013 before me, *Patricia Wegehaupt*  
Notary Public, personally appeared *CHARLES F. MCERLEAN, JR.*, who  
proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to  
the within instrument and acknowledged to me that he executed the same in his authorized  
capacity, and that by his signature on the instrument the person, or the entity upon behalf of  
which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Seal]

[End of signatures.]

RECORDING REQUESTED BY  
FIRST AMERICAN TITLE COMPANY  
NATIONAL/COMMERCIAL SERVICES  
COMMERCIAL/INDUSTRIAL DIVISION

NCS-534575-08  
Recording Requested By and  
When Recorded Return To:

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER

HELEN PURCELL

20130436225 05/13/2013 02:07

ELECTRONIC RECORDING

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sarabiam

Cox, Castle & Nicholson LLP  
2049 Century Park E., 28th Fl.  
Los Angeles, California 90067  
Attn: Amy H. Wells, Esq.

(Space Above This Line For Recorder's Use)

## FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amendment") is made as of May 1, 2013, by and among Fairfield Centerra LLC, a Delaware limited liability company ("Fairfield Owner"), Shops at Serafina LLC, a Washington limited liability company ("Shops Owner", and together with Fairfield Owner, collectively, "Owner"), and the Centerra Homeowners' Association (the "Association"). All capitalized terms not otherwise defined herein shall have the meaning given such terms in the "Declaration" (as herein defined).

### RECITALS

A. Fairfield Owner is the owner of that certain real property located in the City of Goodyear, County of Maricopa, State of Arizona (the "Apartment Parcel"), more particularly described on Exhibit B attached to that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions dated June 26, 2007, and recorded as Instrument 20070747683, in the Official Records of Maricopa County, Arizona on June 28, 2007 (the "Declaration") and incorporated herein by this reference.

B. Shops Owner is the owner of that certain real property located in the City of Goodyear, County of Maricopa, State of Arizona (the "Shops Parcel", and together with the Apartment Parcel, the "Covered Parcel"), more particularly described on Exhibit C attached to the Declaration and incorporated herein by this reference.

C. The Declaration contains certain declarations, limitations, easements, restrictions, covenants and conditions affecting the Covered Parcel.

D. Section 8.1 of the Declaration provides that the Declaration may be amended upon the unanimous written consent of the owners of the Covered Parcel and the prior written

consent of the Board of the Association and Centerra City Center, LLC, an Arizona limited liability company ("Declarant"), "Declarant" under the Declaration, for so long as Declarant is a Class B Member of the Association.

E. Declarant is no longer a Class B Member of the Association.

F. Owner desires to amend the Declaration to provide for such changes to the Declaration as hereinafter set forth and Association desires to consent to such amendment as required pursuant to Section 8.1 of the Declaration.

## TERMS

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The first sentence of Section 3.2.B of the Declaration is hereby deleted in its entirety and replaced with the following:

"The Lien shall have priority over all liens, interests and encumbrances on the Property except for: (i) liens and encumbrances recorded before recordation of the Covenants; (ii) liens for real estate taxes and other governmental assessments or charges against the Property; and (iii) the lien of any existing or future recorded first mortgage or deed of trust on the Property."

2. The fourth sentence of Section 3.2.B of the Declaration is hereby amended as follows (addition in CAPS):

"Any person acquiring title to or coming into possession of the Property through purchase at a foreclosure sale or trustee's sale OF A FIRST MORTGAGE OR DEED OF TRUST, or through any equivalent proceeding shall acquire title free and clear of any claims for Owner's unpaid Assessments that became payable prior to the acquisition of the Property by such person."

3. **Entire Agreement.** This Amendment contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose. Nothing in this Amendment shall be deemed to waive or modify any of the provisions of the Declaration, except as expressly stated herein.

4. **Effect of Amendment.** In the event any of the terms of the Declaration conflict with the terms of this Amendment, the terms of this Amendment shall control. Except as to be amended hereby, all terms and conditions of the Declaration shall remain in full force and effect, and the parties hereto hereby ratify and confirm the Declaration as amended hereby.

5. **Miscellaneous.** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The parties hereto agree that the signature of any party transmitted

by facsimile with confirmation of transmission shall have binding effect as though such signature were delivered as an original.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions as of the day and year first above written.

“Fairfield Owner”

**FAIRFIELD CENTERRA LLC,**  
a Delaware limited liability company

By: FF California Housing Fund, LLC,  
a Delaware limited liability company, Manager

By: FF Properties, Inc.,  
a Delaware corporation, Manager

By:   
Andrew Hinkelmann  
President

STATE OF CALIFORNIA )  
)  
COUNTY OF SAN FRANCISCO )  
) ss:

On FEBRUARY 15, 2013 before me, KATHERINE WOLFF,  
Notary Public, personally appeared ANDREW HINKELMAN, who  
proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to  
the within instrument and acknowledged to me that he executed the same in his authorized  
capacity, and that by his signature on the instrument the person, or the entity upon behalf of  
which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.



  
Signature of Notary Public

[Seal]

[Signatures continued on next page]

### “Shops Owner”

**SHOPS AT SERAFINA LLC,**  
a Washington limited liability company

By:

Name: \_\_\_\_\_

Its:

STATE OF CALIFORNIA *washington* )  
COUNTY OF *King* ) SS:

On May, 1<sup>st</sup>, 2013 before me, Jennifer Carver, Notary Public, personally appeared Paul N. Joos, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Scal1]

er the laws of the State of California that the



Signature of Notary Public

Signature of Notary Public

*[Signatures continued on next page]*

Association, by its execution below, hereby consents to the foregoing First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions as of the date and year first above written, and attests that this consent has been approved by the Board of Directors of the Association at a duly-called meeting with a quorum present or by unanimous written consent in lieu thereof.

"Association"

an Arizona non-profit corporation

By: *Charles F. McElear Jr.*  
 Name: CHARLES F. MCLEAR JR.  
 Its: SECRETARY + TREASURER

STATE OF ARIZONA )  
 )  
 COUNTY OF MARICOPA ) ss:  
 )

On January 23, 2013 before me, Patricia Wegehaupt, Notary Public, personally appeared CHARLES F. MCLEAR JR., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Seal]

[End of signatures.]

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20031216646 08/29/2003 16:25  
ELECTRONIC RECORDING

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RECORDING REQUESTED BY:  
Chicago Title Insurance Company

WHEN RECORDED, MAIL TO

Mark P. Goss, Esq.  
BRYAN CAVE, LLP  
Two North Central Ave., Suite 2200  
Phoenix, AZ 85004-4406

8290301

**FIRST AMENDMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CENTERRA SINGLE-FAMILY DETACHED**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "First Amendment") is made this 27<sup>th</sup> day of August, 2003, by CENTERRA LLC, an Arizona limited liability company ("Declarant").

**WITNESSETH**

WHEREAS, Declarant is the owner of certain real property ("Property") located in the City of Goodyear, Maricopa County, Arizona, described as follows:

SEE ATTACHED EXHIBIT "A"; and

WHEREAS, Declarant, intending to create a general plan of development for certain property within the planned community known as Centerra, had previously caused to be recorded of record on the Property that certain Declaration of Covenants, Conditions and Restrictions for Centerra Single-Family Detached, dated August 2, 2002, and recorded August 2, 2002, as Recording No. 2002-790569 and re-recorded in Recording No. 2002-1333761 (the "Declaration"); and

WHEREAS, pursuant to Section 18.1 of the Declaration, Declarant has the unilateral right to amend the Declaration for any purpose so long as Declarant possesses Class B membership in accordance with the terms of the Declaration; as of the date of this First Amendment, Declarant currently holds such Class B membership; and

42496.1/126018

WHEREAS, Declarant desires to amend the Declaration pursuant to the terms of this First Amendment for the purposes of clarifying under Section 3.7(B)(i) of the Declaration the determination as to when seventy-five percent (75%) of the Lots have been conveyed to Owners, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, Declarant hereby amends and modifies the Declaration and declares that the Property described above shall be subject to all of the reservations, easements, limitations, restrictions, services, covenants, conditions, charges and liens as set forth in the Declaration, as modified by this First Amendment, which are for the purposes of protecting the value and the desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors in title and assigns, and shall inure to the benefit of each Owner thereafter.

**1. DEFINITIONS.**

All capitalized terms used and not otherwise defined in this First Amendment, shall have the same meanings as ascribed to such terms as are contained in the Declaration.

**2. CONVERSION OF CLASS B MEMBERSHIP.** Subsection 3.7(B)(i) of the Declaration is hereby deleted in its entirety and shall be replaced with the following subsection which shall read as follows:

"(i) When seventy-five percent (75%) of the Lots, based on the aggregate number of Lots as depicted on the Plat or Declarant's most recent development plan, whichever is greater, have been conveyed to Owners; provided, however, that for purposes of this clause (i), and notwithstanding the definition of "Owner" or "Owners" as set forth in Section 1.25 of this Declaration, the term "Owner" or "Owners" shall not be deemed to include any Builder to which record title to any Lot or portion thereof has been conveyed or sold, and the term "Owner" for purposes of this sub-clause (i) shall mean and refer to only that category of Owner typically considered and referred to as an "end-user" or "consumer" that intends to occupy a Dwelling Unit to be constructed on any such Lot by a Builder as such Owner's residences."

**3. NO FURTHER AMENDMENTS.** Except as specifically amended, modified or changed herein, all other terms and provisions of the Declaration shall remain in full force and effect, unchanged and unmodified.

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

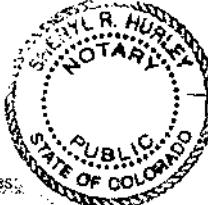
CENTERRA LLC, an Arizona limited liability company

By: Gateway American Properties, LLC,  
a Colorado limited liability company  
Its Manager

By: Joel H. Farkas  
Joel H. Farkas, Manager

STATE OF COLORADO )  
City of ) ss.  
County of Denver )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of August, 2003, by Joel H. Farkas, Manager, who acknowledged himself to be the Manager of Gateway American Properties, LLC, a Colorado limited liability company, and that he has executed the within instrument on behalf of Gateway American Properties LLC, in his capacity as Manager of Gateway American Properties LLC, in its capacity as Manager of Centerra LLC, an Arizona limited liability company, the Grantor of the within instrument, for purposes therein intended.



Sherrel R. Hurley

Notary Public

My Commission Expires:

My Commission Expires  
June 15, 2007

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**EXHIBIT A**

The property subject to the Declaration is more particularly described as:

**Lots 1 to 637, inclusive plus/including Tracts F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD and EE as referenced in the final Plat of CENTERRA, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 553 of Maps, Page 37 and an Affidavit recorded in Instrument No. 01-177542 and an Affidavit recorded in Instrument No. 01-1054755.**

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