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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRCTIONS FOR THE REFUGE COMMUNITY ASSOCIATION

August 13, 2008

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This "AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE REFUGE COMMUNITY ASSOCIATION" (the "Declaration") is made and entered into as of the 16 day of September, 2008, by ZENN LLC, an Arizona limited liability company (the "Declarant") for purposes of amending and restating in its entirety the document entitled Declaration of Covenants, Conditions and Restrictions for The Refuge Community Association, dated September 24, 2002, recorded on October 2, 2002 in the office of the Mohave County Recorder as Document Number 2002064703, as supplemented by the Supplemental Declaration of Covenants, Conditions and Restrictions for The Refuge Community Association dated November 30, 2007, recorded January 1, 2008 in the office of the Mohave County Recorder as Document Number 2008002340 (together the "Original Declaration").

It is the intention of Declarant that the Original Declaration shall be deemed to be superseded in its entirety by this Declaration, and that after the recording of this Declaration, the Original Declaration shall be of no further force and effect and may be ignored by future title examiners.

This Declaration provides for an extensive degree of control by Declarant including, but not limited to, (a) control of the "Association," the type and design of improvements which may be built upon "Lots" with fines for noncompliance, and the use, and limitations upon use, of the "Common Areas"; (b) the right to amend this Declaration; and (c) substantial flexibility in developing the "Property." Declarant's control is an integral part of this Declaration and the general scheme of development and operation of the Property. Section 16.6 contains a limitation on the liability of Declarant and its members and principals. Each "Owner," by accepting title to a Lot, and all other "Persons" hereafter acquiring any other interest in any of the Property, acknowledge, agree to and accept Declarant's control of the Property and the limited liability of Declarant, and its members and principals, as provided in this Declaration. Capitalized terms used in this paragraph are defined in this Declaration.

RECITALS

A. Declarant is the record owner of that parcel of real property in Mohave County, Arizona, described on Exhibit "A" hereto (the "Property"),

B. Declarant desires to submit and subject the Property (and any other real property annexed to it pursuant to the provisions of this Declaration), together with all buildings, improvements and other permanent fixtures of whatever kind now or

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hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein.

C. Declarant desires that the "The Refuge Community" be developed in accordance with a master plan and general scheme of development as part of a master planned community to be known as "The Refuge at Lake Havasu" containing residential lots and related recreational facilities.

D. Declarant deems it desirable to establish covenants, conditions and restrictions applicable to the Property and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property.

E. It is desirable for the efficient management of the Property to create an owners association and to delegate to it the powers of (a) managing, maintaining and administering the Common Areas and any Areas of Common Responsibility within the Property; (b) administering and enforcing these covenants, conditions and restrictions; (c) collecting and disbursing funds pursuant to the Assessments and other charges hereinafter created; and (d) performing other acts provided for in this Declaration or which generally benefit its members, the Property, and the owners of any interests therein.

F. The Refuge Community Association, Inc., a nonprofit corporation has been incorporated under the laws of the State of Arizona for the purpose of exercising the foregoing powers and functions.

G. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other Persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Properly.

DECLARATIONS

NOW, THEREFORE, Declarant, for the purposes above set forth, declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be

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binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Association and each member of the Association.

1. DEFINITIONS.

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined below. Defined terms appear throughout this Declaration with the initial letter of each word in the term capitalized.

1.1. **"Annexation Property"** means any additional real property which is annexed to the Property in accordance with the provisions hereof, thereby becoming a part of the Property and subject to the Declaration.

1.2. **"Areas of Common Responsibility"** means any portions of the Property not owned by the Association (and, thus, not Common Areas) for which the Association has maintenance and/or repair responsibility pursuant to this Declaration, a recorded subdivision plat or other recorded instrument, or by contract.

1.3. **"Articles"** means the Articles of Incorporation of the Association, as they may be amended from time to time, or of any successor thereto.

1.4. **"Assessments"** shall include the following:

1.4.1. **"Regular Assessment"** means the amount which is to be paid by each Owner as the Owner's Proportionate Share of the Common Expenses of the Association and any applicable Neighborhood Assessments, all as provided by Article 6.

1.4.2. **"Special Assessment"** means a charge against a particular Owner or Lot, directly attributable to the Owner or Lot, to reimburse the Association for costs incurred in bringing the Owner or the Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, together with attorneys' fees and other charges payable by the Owner or chargeable to the Lot pursuant to the provisions of this Declaration, as provided in Article 7.

1.4.3. **"Capital Improvement Assessment"** means the amount which is to be paid by each Owner representing the Owner's Proportionate Share of the cost to the Association for the installation, construction or reconstruction of any capital improvements on any of the Common Areas or Areas of Common Responsibility

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which the Association may from time to time authorize pursuant to the provisions of Section 6.5.

1.5. **"Association"** means The Refuge Community Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

1.6. **"Association Documents"** means this Declaration, all Supplemental Declarations, the Articles, the Bylaws, the Association Rules, the Design Review Committee Rules, and the Board Resolutions.

1.7. **"Association Rules"** means the rules and regulations adopted by the Board.

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

1.9. **"Bylaws"** means the bylaws of the Association adopted in accordance with the Articles, as the bylaws may be amended from time to time, or of any successor thereto.

1.10. **"Common Areas"** means all real property (and the improvements or amenities thereon) which may from time to time be owned by the Association expressly for the common use and enjoyment of the Owners. The Common Areas shall include, but are not limited to, Private Roads, real property, and other improvements or amenities thereon, designated as "Common Areas" in a Supplemental Declaration or a plat or other instrument recorded by Declarant with respect to any portion of the Property which shall be held by the Association. Common Areas may be abandoned in the manner prescribed herein.

1.11. **"Common Expenses"** means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Property, and in owning or leasing any portions thereof, and in otherwise performing its rights and responsibilities including, but not limited to, the following:

1.11.1. The costs of maintenance, management, operation, repair and replacement of the Common Areas and all other areas in the Property which are managed or maintained by the Association other than those areas being managed or maintained through a Special Assessment or Neighborhood Assessment;

1.11.2. Unpaid Assessments;

1.11.3. The costs of maintenance by the Association of areas within the right-of-way of public streets in the vicinity of the Property which may be provided for in this Declaration or pursuant to agreements with Mohave County;

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1.11.4. The costs of managing and administering the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

1.11.5. The costs of utilities including, but not limited to, water, electricity, gas, sewer, trash pickup and disposal services which are provided to the Association or the Property and not individually metered or assessed by Lot; common area landscaping maintenance; and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Association;

1.11.6. The costs of insurance maintained by the Association as permitted herein;

1.11.7. Reasonable reserves, as required or permitted herein, including any Reserve for Capital Improvements, for contingencies, replacements and other proper purposes to meet anticipated costs and expenses including, but not limited to, repair and replacement of those Common Areas and Areas of Common Responsibility which must be repaired or replaced on a periodic basis;

1.11.8. The costs which the Board may elect to incur to bond the members of the Board, officers of the Association, any professional managing agent or any other Person handling the funds of the Association;

1.11.9. Taxes paid by the Association;

1.11.10.Amounts paid by the Association for discharge of any lien or encumbrance levied against all or any portion of the Common Areas or the Association's interest in any Areas of Common Responsibility;

1.11.11.Costs incurred by the Design Review Committee, or by Declarant in exercising its rights;

1.11.12. Pre-approved costs incurred by any other committees established either by the Board or by the President;

1.11.13 .The costs of any patrols and operation of any gatehouse(s), access control gates at entrances to the Property, and/or any other alarm systems or services installed, operated or contracted for by the Association, other than alarm service to individual Lots;

1.11.14 .The costs of or the subsidization of, recreation, cultural, health-related or similar facilities or enterprises available to or for the benefit of all owners; and

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1.11.15 .Other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas or Areas of Responsibility (except reconstruction costs and capital improvements as otherwise provided herein), or the costs of any other item or items designated by, or to be provided or performed by the Association pursuant to this Declaration, the Articles, Bylaws, Association Rules, Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.12. **"Compound"** means a consolidation of Lots by re-platting, or a re-platting of two or more contiguous Lots to permit a clustering or other relocation of dwellings. A Compound may have commonly owned amenities as permitted by and in accordance with the Design Guidelines.

1.13. **"Concealed From View"** means the obscuring from view of objects permitted under Association documents to be placed, kept or maintained in side or rear yards by placing, keeping or maintaining said objects behind a wall and/or opaque gate of not less than five feet nor more than six feet in height approved by the Design Review Committee. To be deemed concealed from view, the objects shall not be visible above the wall or opaque gate, from the street adjacent to the property and from golf course in rear of the property.

1.14. **"County"** means Mohave County, a county in the State of Arizona.

1.15. **"Declarant"** means Zenn LHC, LLC, an Arizona limited liability company, its successors and assigns, or any Person to whom Declarant's rights hereunder are expressly assigned in whole or in part by recorded instrument. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Declarant's rights shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of Declarant's rights hereunder.

1.16. **"Declaration"** means this instrument, as from time to time amended.

1.17. **"Default Rate of Interest"** means 12% per annum, or such other rate as may be specified by the Board from time to time. Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may, under applicable law, be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the Default Rate of Interest payable during those periods shall be the highest lawful rate.

1.18. **"Design Guidelines"** means the rules, regulations, restrictions, architectural standards and design guidelines from time to time adopted by the Design

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Review Committee, or by Declarant prior to the Transition Date.

1.19. "**Design Review Committee**" means the committee provided for in Section 1.18.

1.20. "**Golf Club Facilities**" or "**Golf Course**" means the golf course and related facilities (including any golf practice facilities and related recreational and social facilities) constructed within the boundaries of the Property, and all improvements thereto, including any maintenance or other buildings constructed thereon.

1.21. "**Golf Club Owner**" means Declarant, its successors and assigns who from time to time own the Golf Club Facilities.

1.22. "**Improvement**" means: (a) any structure, building, fence or wall; (b) any swimming pool, tennis court, basketball court, road, driveway, sidewalk, parking area 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); (e) security gates and/or gatehouse(s), (f) streets; and (g) any other structure of any kind or nature.

1.23. "**Landscaping**" shall mean all shrubs, trees, hedges, grasses and plantings of every kind together with an irrigation system (including an electrically operated landscape controller) designed to adequately water the shrubs, trees, hedges, grasses, plantings and other landscaping improvements. Non-organic materials such as colored rocks and boulders may be incorporated into Landscaping.

1.24. "**Lien**" means a charge upon real property securing payment to the Association of assessments, fines and penalties as well as other charges permitted or authorized under this Declaration.

1.25. "**Lot**" means a subdivided lot owned by anyone other than Declarant, its successors and/or assigns, as shown on the Plat. A "Lot" also includes the residential dwelling unit, garages, structures and other improvements constructed thereon.

1.26. "**Majority of Members**" means the Members holding more than fifty percent (50%) of the total votes entitled to be cast with respect to a given matter. Any specified fraction or percentage of the Members means the Members holding that fraction or percentage of the total votes entitled to be cast with respect to a given matter. A specified fraction or percentage "of all of the Members except Declarant" means that fraction or percentage of the total votes of all Members other than Declarant. Unless otherwise specified, any provision herein requiring the approval of the Members means the approval of a Majority of Members.

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1.27. **"Member"** means any Person who is an Owner.

1.28. **"Member in Good Standing"** means a Member who is current in its obligations to the Association, including but not limited to payment of all Assessments, fines and penalties and is in compliance with all Association Documents.

1.29. **"Membership"** means a membership in The Refuge Community Association.

1.30. **"Mortgage"** means a deed of trust or a mortgage recorded against a Lot.

1.31. **"Mortgagee"** means the beneficiary under a deed of trust or a mortgagee under a mortgage recorded against the Lot.

1.32. **"Mortgagor"** means the party executing a Mortgage as obligor.

1.33. **"Neighborhood"** shall mean and refer to a group or series of Lots within the Property designated as a Neighborhood by this Declaration, or subsequently recorded Declaration of Neighborhood which shall be an exclusive use area, common theme, entry feature or other feature or other facilities not available for use by the general membership.

1.34. **"Neighborhood Assessment"** means a charge against each Lot within a Neighborhood, representing the Lot's share of incremental costs incurred by the Association in connection with a particular feature or characteristic of, or service to, the Neighborhood which is substantially different from other Lots not within the Neighborhood (in the judgment of the Board).

1.35. **"Neighborhood Common Area"** means: (a) all land, together with all Improvements situated thereon, which a Neighborhood at any time owns in fee or in which a Neighborhood has a leasehold interest, easement or license for so long as the Association is the owner of the fee or holds such leasehold interest, easement or license; and (b) any and all other
property and Improvements identified, designated or defined, by a Neighborhood Declaration, recorded subdivision plat or other recorded instrument, as "Common Area" of a Neighborhood.

1.36. **"Noncompliance"** shall mean and refer to any condition existing on a Lot that fails to comply, in part or in full, with the Association Documents.

1.37. **"Occupant"** means any Person, other than an Owner, in rightful possession of an Owner's Lot, whether an Owner's immediate family member, guest, tenant or other individual.

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1.38. **"Owner"** means the record owner, excluding the Declarant, of fee simple title to any Lot which is a part of the Property, whether or not title is held by more than one Person or is subject to a Mortgage. The term also includes contract sellers, but excludes those having an interest in a Lot merely as security for the performance of an obligation.

1.39. **"Person"** means an individual, corporation, partnership, limited liability company, trustee or other entity holding title to real property, and their respective heirs, successors and assigns.

1.40. **"Plat"** means the plat of subdivision of the Property recorded in the official records of Mohave County, Arizona, on September 24, 2002, in Book 4210 of Maps and Plats, at page 129, and as thereafter from time to time amended or supplemented, together with all subsequently recorded plats for real property annexed to the Property.

1.41. **"Private Road"** means any street or roadway within the Property which has not expressly been dedicated to public use.

1.42. **"Project" or "Property"** means the real property described on Exhibit "A" and any additional real property annexed into this Declaration pursuant to the terms hereof, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto. The Property shall not include the Golf Club Facilities or any other property, unless and until the property is annexed hereto.

1.43. **"Related Party"** means any member in Declarant and any member, partner, trustee, officer, director, shareholder, employee or similar Person holding an interest or position in Declarant or in any member in Declarant, and their successors and assigns.

1.44. **"Reserve for Capital Improvements"** means a reserve established for repair and replacement of capital assets and similar property, and other proper purposes to meet anticipated costs and expenses including, but not limited to, repair and replacement of those Common Areas or Areas of Common Responsibility which must be repaired or replaced on a periodic basis.

1.45. **"Supplemental Declaration"** means a declaration of covenants, conditions and restrictions, or similar instrument, annexing additional real property to the Property and subjecting the annexed real property to this Declaration. A Supplemental Declaration may contain such additional or different provisions as may be appropriate for the real property being annexed so long as any such additional or different terms are not materially in conflict with the general plan of development

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established by this Declaration for the rest of the Property.

1.46. **"Transition Date"** means 20 years from the date hereof or such earlier date as (a) neither Declarant nor any Related Party owns fee title to any portion of the Property, (b) Declarant voluntarily turns over control of the Association to the Owners, or (c) no later than 60 days following the sale by Declarant of 95% of the lots.

1.47. **"Violation"** shall mean and refer to a failure to comply with the general rules and regulations set forth in the Association Documents.

2. PLAN OF DEVELOPMENT.

2.1. **Property Initially 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, 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. 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 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 the Association and all Owners.

2.2. **Disclaimer of Representations Regarding Completion and Development.** The Declarant makes no representations or warranties whatsoever that: (a) the Project will be completed in accordance with the plans for the Project 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 salespersons representing the Declarant or any Developer shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration or of any part of the Additional Property.

2.3. Restriction on Liability of the Association and the Declarant.

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Guardhouses and/or privacy gates may be constructed within or adjacent to the Project in order to limit access and to provide more privacy for the Owners and Occupants. If any such guardhouses and/or privacy gates are installed, the Declarant makes no representations or warranties that a guard service will be provided or, if guard service is provided, that it will be provided during any particular hours or be continued in the future. If guardhouses and/or privacy gates are installed, each Owner and Occupant, and their families, guests and invitees, acknowledge and expressly agree to assume the risk that any such guardhouse and/or privacy gate will restrict or delay entry into, or access within, the Project by police, fire department, ambulances or other emergency vehicles or personnel. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner or Occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence, operation or maintenance of any such guardhouse.

2.4. **Security.** The Refuge Community Association, Inc., will strive to maintain The Refuge as a safe, secure residential environment. HOWEVER, NEITHER THE REFUGE COMMUNITY ASSOCIATION, INC. NOR ZENN LHC, LLC SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNER, TENANTS, GUESTS, INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE REFUGE COMMUNITY ASSOCIATION, INC. AND THE REFUGE COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING, ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO RESIDENCES, AND TO THE CONTENTS OF RESIDENCES AND FURTHER ACKNOWLEDGE THAT THE REFUGE HAS MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

2.5. **Development Plan.** Notwithstanding any other provision of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the Development Plan with respect to any property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the property owned by the Declarant or changing the nature or extent of the uses to which such property may be devoted. Declarant intends to develop the Property in one phase. Declarant may, however, elect to develop the Property in phases, elect not to develop all or any part of the Property. Moreover, Declarant reserves the right to subject all or any portion of the Project to the plan of this Declaration or to one or more separate declarations of covenants, conditions and restrictions which subjects any such property to the jurisdiction and powers of a homeowners association or other entity with powers and obligations similar to the Association and which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex additional property as provided in this section, Declarant shall not be obligated to annex all or any portion of

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any property presently contemplated or intended to be included within the project, and such property shall not become subject to this Declaration except as provided in this section.

2.6. **Supplemental Declarations.** A Supplemental Declaration shall be a writing in recordable form which annexes additional real property to the plan of this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration. Supplemental Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not materially inconsistent with the plan of this Declaration. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants established by this Declaration with respect to any portions of the Property already subject to this Declaration. The recordation of a Supplemental Declaration shall constitute and effectuate the annexation of the Annexation Property described therein, making the Annexation Property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association. After annexation, the Annexation Property shall be part of the Property for all intents and purposes of this Declaration, and all of the Owners of Lots in the Annexation Property shall automatically be Owners and Members.

2.7. **Annexation Without Approval of Association.** Declarant shall have the sole right (with the consent of the other owner(s) of the additional property if Declarant does not own the additional property) to annex additional property to this Declaration as provided in this section whether or not the additional property is part of the property anticipated to be part of the project. Declarant may annex additional real property to this Declaration without the approval, assent or vote of the Association or its Members by recordation of a Supplemental Declaration covering the property then being annexed.

3. ASSOCIATION.

3.1. **Purpose of Association.** The Association has been incorporated as a nonprofit corporation to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, payment of ad valorem taxes on Common Areas, and other matters as provided in this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines. The Association shall not be deemed to be conducting a for-profit business of any kind and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

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3.2. **Membership in Association.** There shall be one Membership in the Association for each Lot. If the Owner of a Lot is other than one individual, each individual and entity comprising the owner shall be considered a Member but the number of Memberships or votes attributable to the Lot shall not be increased by the fact of multiple ownership. An Owner shall remain a Member of the Association until he ceases to be an Owner, at which time his Membership in the Association shall automatically cease.

3.3. **Votes in the Association.**

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

3.3.2. Until the Transition Date, the Declarant shall be entitled to 1080 votes (360 lots x 3 votes/lot). For each Membership transferred away from Declarant to an Owner other than Declarant, Declarant's total votes shall be reduced by three (3).

3.3.3. Until the Transition Date: (a) the Association shall be deemed to have two classes of Members, Class A and Class B; (b) the Declarant shall be the Class B Member, and all votes held by the Declarant shall be Class B votes; (c) all Owners other than Declarant shall be Class A Members, and all votes held by such Owners shall be Class A votes. After the Transition Date, the Association shall be deemed to have a single class of Members and votes. Notwithstanding the foregoing, however, except as otherwise expressly provided in this Declaration or in any of the other Association Documents, any issue put to a vote at a duly called meeting of Members at which a quorum is present shall be decided by a simple majority of all votes represented in person or by valid proxy at such meeting, regardless whether such votes are otherwise deemed to be Class A votes or Class B votes.

3.3.4. No Owner shall be entitled to exercise any voting rights as a Member in the Association during any period in which the Owner is not a Member in Good Standing

3.4. **Voting Procedures.** The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote or votes for a particular Lot, the vote or votes for that Lot shall be deemed void and shall not be counted. In the event that a Lot is owned by more than one Person and such 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. In the event that a Lot is owned by more than one person(s) the Owner(s) of record shall designate in writing on a form approved or prescribed by the Association

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an individual to cast the vote. The individual designated to cast the Membership vote must be an Owner. If the Owner is or includes a Person other than an individual, the individual designated to cast the Membership vote must be an individual who is (a) a member of the limited liability company, if the Owner is or includes a limited liability company, or (b) a partner in the partnership, if the Owner is or includes a partnership, or (c) an officer of the corporation., if the Owner is or includes a corporation, or (d) a beneficiary of the trust, if the owner is or includes a trust, or (e) an owner of the entity, if the Owner is or includes a Person other than an individual, a limited liability company, a partnership, a corporation or a trust. The individual designated to cast the vote shall be the only Person entitled to vote for the Owner of the Lot at Association meetings and elections. An Owner may change the individual designated to vote for his Lot, provided the newly designated individual is eligible to cast the Membership vote hereunder. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded; the Board shall thereafter be given written notice of such change and provided satisfactory evidence thereof.

3.5. **Transfer of Membership.** The rights and obligations of any Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an 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 shall be void. Any transfer of ownership of a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his, her or its purchase of a Lot. The Association may require the Purchaser of a Lot to pay to the Association a transfer fee in an amount to be set by the Board, and the transfer fee shall be secured by the Assessment Lien.

3.6. **Board of Directors.**

3.6.1. The affairs of the Association shall be conducted by the Board as provided herein and in accordance with the Articles and Bylaws. Except for directors appointed by Declarant, each director shall be an individual qualified to cast votes for a Membership. If a director ceases to meet these qualifications during his term, he will cease to be a director and his place on the Board shall be deemed vacant. Unless the vote or consent of the Members is expressly required hereunder, any action required or permitted to be taken by the Association shall be satisfied or taken by the Board. The Board may appoint various committees at its discretion.

3.6.2. Declarant shall have the absolute power and right to appoint and remove the members of the Board until the Transition Date. After the Transition

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Date, the Members of the Association shall have the power and right to elect and remove the members of the Board as provided in the Articles and Bylaws. Declarant may (but shall not be required to) relinquish its rights under this section prior to the Transition Date by recording a notice of relinquishment. Declarant may also allow Members of the Association to elect one or more members of the Board from time to time before the Transition Date without relinquishing the absolute power to appoint and remove directors provided for in this section.

3.7. **Approval of Member.** Unless elsewhere otherwise specifically provided in this Declaration, the Articles or Bylaws, any provision of this Declaration, the Articles or Bylaws which requires the vote or written assent of the Members of the Association shall be deemed satisfied by the following:

3.71 The vote in person or by proxy of the required percentage of Members at a meeting duly called and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings of the Members.

3.7.2. Written consents signed by the required percentage of Members as provided in the Bylaws following notice to all Members.

3.7.3. If no percentage of Members is otherwise specified then the vote or written assent of a Majority of Members shall be required.

3.8. **Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Association Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Association Documents or reasonably necessary to effectuate any such right or privilege. The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members not inconsistent with law or this Declaration.

3.9. **Association Rules.** The Board shall be empowered to adopt, amend or repeal rules and regulations which it deems reasonable and appropriate binding upon all Persons and Occupants, subject to this Declaration and governing the use and/or occupancy of the Common Areas or any other part of the Property. The Association Rules may establish a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern all matters pertaining to the purposes of the Association including, but not limited to, the use of the Common Areas; provided, however, the Rules shall not be inconsistent with this Declaration, the Articles, Bylaws or Design Guidelines. The Association may make reasonable rules relating to the right of entry through the entrance gates, but none which unduly restrict entry to Owners or Occupants or their tenants and guests or to prospective purchasers of homes or Lots

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invited by an owner or which unreasonable impede the easement granted the Golf Course Facilities. The Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the owners, and all other Persons having any interest in, or making any use of, the Property, whether or not actually received thereby. The Association Rules, as adopted and amended, shall be available at the principal office of the Association to each Owner and other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration, the Articles, Bylaws or Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, Bylaws or Design Guidelines to the extent of the conflict.

3.10. **Non-Liability of Officials.** To the fullest extent permitted by law, Declarant, the Board, the Design Review Committee and other committees of the Association, and each member thereof, each director and officer of the Association, shall be free from liability to any Member, Owner, Occupant, the Association or any other Person 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, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board, or any committee or other individual reasonably believed to be within the scope of their respective duties.

3.11. **Indemnification.** To the fullest extent permitted by law, every director and every officer of the Association, and the members of the Design Review Committee and Declarant (to the extent a claim may be brought against Declarant by reason of its appointment, removal or control over members of the Board or the Design Review Committee) shall be indemnified by the Association, and every other individual serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of Declarant by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee), or any settlement thereof, whether or not he is a director, officer or member of the Design Review Committee or serving in such other specified capacity at the time the expenses are incurred, provided that the Board determines, in good faith, that the officer, director, member of the Design Review Committee or other individual, or Declarant, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. These rights of indemnification shall be in addition to and not exclusive of all other rights to which those individuals may be entitled at law or otherwise.

3.12. **Accounting.** The Association shall keep, or cause to be kept, true and

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correct records of account in accordance with generally accepted accounting principles. The Association's records shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise. The Association shall cause the books and records of the Association to be audited or reviewed, in the Board's discretion, on an annual basis by an independent accounting firm selected by the Board.

3.13. **Records.** Upon reasonable written request and during reasonable business hours, the Association shall make the books, records and financial statements of the Association available for inspection by each Owner, at the Association's office, together with current copies of this Declaration and the Articles, Bylaws, Association Rules and Design Guidelines.

3.14. **Managing Agent.** All powers, duties and rights of the Association, the president and the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no delegation shall relieve the Association of its obligation to cause the delegated duty to be performed.

3. 15. **Change of Use of Common Area.** Upon: (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners; and (b) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy, at a meeting duly called for such purpose and who are entitled to use such Common Area under the terms of this Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be consistent with any zoning re[g]ulations restricting or limiting the use of the Common Area. This section shall not apply to, or be deemed to limit in any way, the right and power of the Association (a) to grant easements over, under or through portions of the Common Area, or to dedicate portions of the Common Area, to public, quasi-public or private utility companies, municipalities or other governmental agencies or entities, in connection with or at the time of development of property within or adjacent to the Project, where required or requested by any municipality or other governmental agency or entity, or any public, quasi-public or private utility company.

3.16. **Declarant's Control of Association.** Notwithstanding anything in this Declaration to the contrary, Declarant shall have the exclusive right to appoint all members of the Board until the Transition Date. In addition, Declarant shall have exclusive right to appoint all members of the Design Review Committee until all Lots

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have been improved. Declarant may (but shall not be required to), relinquish all or any portion of his Rights of Control of the Association at any time prior to the Transition Date or until all Lots have been improved in the case of the Design Review Committee. Declarant may also allow the Members to vote on particular matters (in Declarant's sole discretion) without relinquishing Declarant's absolute control of the Association.

4. **GOLF CLUB FACILITIES.**

4.1. **General.** The Golf Club Facilities are not Common Areas and are not subject to this Declaration. No provision of this Declaration gives, or shall be deemed to give, any Owner or Occupant the right to use the Golf Club Facilities. Neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest nor right to use the Golf Course. Rights to use the Golf Club Facilities will be granted only to those Persons, and on those terms and conditions, as may be determined from time to time by the Golf Club Owner. By way of example, but not limitation, the Golf Club Owner shall have the right to approve users and determine eligibility for use, to reserve use rights, to transfer any or all of the Golf Club Facilities or operation thereof to anyone and on any terms, to limit availability of use privileges, and to require the payment of a purchase price, a membership contribution, equity, a membership deposit, dues, and/or use charges.

4.2. **Jurisdiction and Cooperation.** It is Declarant's intention that the Association and the Golf Club Owner cooperate to the maximum extent feasible in the operation of the Property and the Golf Club Facilities. Neither Declarant, the Design Review Committee nor the Association shall approve or permit any construction, addition, alteration, change or installation on or to any portion of the Property which is adjacent to, or otherwise in the direct line of sight of the Golf Club Facilities, without the prior written consent of the Golf Club Owner. To accommodate the Owners of Lots as well as the Golf Club Owner in facilitating the Golf Club Owner's review of improvements, the Golf Club Owner shall have a representative on the Design Review Committee to exercise Golf Club Owner's rights under this Paragraph. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Club Facilities without the prior written consent of the Golf Club Owner.

4.3. **Ownership of Golf Club Facilities.** Each Owner and Occupant hereby acknowledges that no representations or warranties have been or are made by Declarant or any other Person with regard to the use of, or the nature or size of improvement to, or the continuing ownership or operation of the Golf Club Facilities. It is not contemplated that the Golf Club Facilities will be annexed to the Property and thereby subjected to this Declaration.

4.4. **No Assessments; Golf Club Charges.** Notwithstanding any other provision of this Declaration, the Golf Club Owner shall not pay any Assessments

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under this Declaration, and the Golf Club Facilities shall be completely exempt from any of the provisions of this Declaration pertaining to the payment of Assessments and liens in favor of the Association. If the Golf Club Owner enters into a cost sharing (or similar) agreement with the Association requiring a contribution by the Golf Club Owner toward the costs of maintenance and repair of those Common Areas used by the Golf Club Owner, payments due thereunder may be enforced only by an action at law to collect the debt. Use of Common Areas provided for herein may not be denied or limited as a way of collecting sums owed or of enforcing other terms and conditions of this Declaration or any cost sharing (or similar) agreement with the Golf Club Owner.

4.5. **Golf Club Facilities Easements.**

4.5.1. There are hereby established easements over the Common Areas for ingress and egress, utilities, and other purposes reasonably necessary or convenient to the development, maintenance, preservation, administration, advertisement, or operation of the Golf Club Facilities and the sale of memberships to the Golf Club Facilities. The easements created by this section shall be in favor of the Golf Club Owner, the members of the Golf Club Facilities (regardless of whether the members are Owners), their guests and invitees, and the employees, agents, contractors and designees of the Golf Club Owner, and shall be appurtenant to the Golf Club Facilities. The easements created by this Section shall include, but are not limited to, easements for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment (including wells, pumps, and pipelines), utility lines, wires, and drainage pipelines, and for ingress and egress for storage and maintenance vehicles and equipment, including transportation of chemicals and other items.

4.5.2. The easement for ingress and egress established by this section shall include the use of the Common Areas (including access through gates) as reasonably necessary to travel from the entrance to the Property to the Golf Club Facilities, and to and from portions of the Golf Course to other portions of the Golf Course (including in connection with public or private functions held at the Golf Club Facilities). Without limiting the generality of the foregoing, the Golf Club Owner, members of the Golf Club Facilities and their guests and invitees and permitted members of the public shall have the right to park their vehicles on the Private Roads at reasonable times before, during, and after tournaments and other similar functions held at the Golf Club Facilities. The Association shall have the right to regulate parking on the street (e.g. parking on one side only). The easement created in this section includes the right of golfers playing the Golf Course to drive their golf carts along or across the Private Roads within the Property.

4.5.3. In no event shall the Association exercise its authority over the Common Areas (including, but not limited to, gates and similar controls on access to the Property) in any manner that would deny or impede access to the Golf Club Facilities, including through gates and other security points, or to otherwise materially

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frustrate the rights of the Golf Club Owner, its guests, invitees, employees, agents, contractors, and designees to use the Common Areas as provided in this Declaration. Except as otherwise provided in this section, no fees or other charges shall be imposed on the Golf Club Owner for the use by the Golf Club Owner, its guests, invitees, employees, agents, contractors, and designees of the Common Areas. The Association shall not establish or change the hours of operation of any security gates without the prior written consent of the Golf Club Owner.

4.5.4. The Golf Club Facilities shall have an easement over, upon and across every Lot and the Common Area permitting errant golf balls to pass over or land upon the Lots and Common Areas and for golfers at reasonable times and in a reasonable manner to enter upon the Common Areas or the exterior portions of a Lot to retrieve errant golf balls. Provided, however, if any Lot or Common Area is fenced or walled, the golfer shall seek the Owner's (in the case of a Lot) or the Association's (in the case of Common Area) permission before entry. The existence of the foregoing easement shall not relieve golfers of liability, if any, which may exist under Arizona law for damage caused by errant golf balls. Neither the Association, nor its Members, the Golf Club Owner, Declarant, any Related Party or their respective members, partners, officers, directors or shareholders shall be liable for any damage or injury resulting from errant golf balls or the exercise of this easement. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to agree and covenant not to make any claim or institute any action whatsoever against Declarant, the Association, Design Committee, the Golf Course Owner, or the Golf Course designer arising or resulting from any errant golf balls, any damage that may be caused thereby, or for negligent design of the Golf Course or the location of any Lot.

4.5.5. The Lots and Common Areas adjacent to the Golf Club Facilities are hereby subjected to a non-exclusive easement in favor of the Golf Club Facilities for overspray of water from any irrigation system serving the Golf Club Facilities. Under no circumstances shall the Association, Declarant, any Related Party or the Golf Club owner be held liable for any damage or injury resulting from overspray or the exercise of the foregoing easement. As a routine part of the maintenance of the Golf Course, there may be times that Residences and Common Areas abutting the Golf Course are subject to innundation or sprinkling of irrigation water on walls, fences, patio areas (including furniture), windows or other parts of the Lot or Improvements thereon which may cause Owner or Occupant or Association additional maintenance or may cause actual damage to Improvements. Each Owner and the Association acknowledge that such risk exists and expressly assumes all responsibility for maintenance of his, her or its walls, fences, patio areas (including furniture), windows or other parts of the Lot or Improvements thereon. An Owner or Occupant or the Association shall not be authorized to alter any landscaping device of the Golf Course to prevent or divert such occurrences. Owner and Association acknowledges Golf Course Operator owes Owner or Association no duty

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to avoid errant water. The water used to irrigate the Golf Course and to fill the lakes is tertiary treated. The water is safe for exterior contact only. The water is **NOT POTABLE. IT IS NOT SAFE FOR HUMAN OR PET CONSUMPTION.** Care should be exercised by all users of the Golf Course and Residents adjacent to the Golf Course to not consume or intake in any manner the irrigation or lake water. Swimming in the lakes is expressly prohibited.

4.6. **Assumption of Risk.** Each Owner and Occupant expressly assumes the risk of noise, personal injury and property damage and any other condition caused by the existence of the Golf Club Facilities or caused by the maintenance and operation of the Golf Club Facilities including, but not limited to: (a) noise from maintenance equipment, (b) noise caused by golfers, (c) use of pesticides, herbicides, fertilizers and effluent, (d) view restrictions caused by maturation of trees and shrubbery, (e) reduction in privacy caused by golf traffic on the golf course or the removal or pruning of shrubbery or trees on the golf course, (f) design of the golf course, and (g) the possibility of golf balls entering the property adjacent to the Golf Club Facilities and causing damage to property and injury to persons. Each Owner and Occupant acknowledges that maintenance of the Golf Course typically takes place around sunset or sunrise. Each Owner and Occupant agrees that neither Declarant, the Association, any Related Party, any agents of Declarant, nor any other entity owning or managing the Golf Course or supplying equipment, materials or services to the Golf Course shall be liable to owner or any other Person claiming any loss or damage including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction or property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the Golf Club Facilities including, but not limited to, any claim arising in whole or in part from the negligence of Declarant, the Association, the Golf Club Owner or any other entity owning or managing the golf course.

4.7. **No Right to Use Golf Course Facilities.** Neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or right to use the Golf Course. The owner of the Golf Course shall have the right, from time to time in its sole and absolute discretion and without notice, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

4.8. **No Access to Golf Course.** No access, pedestrian, pet, or vehicular, to the Golf Course, including golf cart paths, shall be attained from any Lots adjacent and contiguous to the Golf Course. Access to the Golf Course shall be at points and in the manner designated by the Golf Course owner/operator.

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4.9. View Impairment. Neither the Declarant, the Association nor the owner or operator of the Golf Course guarantees or represents that any view over and across the Golf Course from adjacent Lots will be preserved without impairment. The owner of the Golf Course, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.10. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the owner of the Golf Course, no amendment to this Article, and no amendment in derogation of any rights reserved or granted to the owner of the Golf Course by other provisions of this Declaration, may be made without the written approval of the owner of the Golf Course. The foregoing shall not apply, however, to amendments made by the Declarant.

4.11. Rights of Golf Club Owner. Declarant and each Owner and occupant acknowledge that this Declaration is intended to be relied upon by the Golf Club Owner, and that the Golf Club Owner is an express beneficiary of this Declaration. In the event of any default by any Owner, Occupant or other Person of provisions which materially affect the Golf Club Owner, the Golf Club Owner shall have each and all of the rights and remedies which may be available to the Golf Club Owner hereunder or at law or equity, including, but not limited to, an action or other proceedings for an injunction, whether affirmative or negative, or for damages, or specific performance. If the Golf Club Owner prevails in any action or proceeding to enforce this Declaration described or permitted by this section, the Golf Club Owner shall be entitled to recover all costs and expenses incurred in connection with the action or proceeding, including court costs and reasonable attorneys' fees and other fees and expenses, together with interest thereon until paid at the Default Rate of Interest.

5. EASEMENTS.

5.1. Blanket Easements. A blanket easement is hereby created upon, across, over and under the Property for ingress and egress (over roadways existing from time to time), and for installing, constructing, replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the utility provider to erect (including,

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but not limited to, underground installation) and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the Property. Notwithstanding anything to the contrary contained in this section, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by Declarant or thereafter created or approved by the Association. This provision shall in no way affect any other recorded easements on the Property.

5.2. **Owners' Right of Enjoyment.** Every Owner and Occupant shall have a non-exclusive easement for use and enjoyment of the Common Areas, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration including, but not limited to, the following provisions:

5.2.1. The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or Areas of Common Responsibility, or adding new Common Areas or Areas of Common Responsibility, and the right to mortgage the Common Areas and the Association's interest in any Areas of Common Responsibility, provided that the rights of any lender shall be subordinated to the rights of the Owners.

5.2.2. The Association shall have the right to regulate the use of the Common Area through the Association Rules (which may include, without limitation, the adoption and implementation of a reservation system for such portions of the Common Area, or Improvements or amenities thereon, as the Board deems appropriate) and to prohibit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or other Occupants.

5.2.3. If a Board of Directors or a Supplemental Declaration designates a portion of the Common Area as a Neighborhood Assessment Area, then only the Owners and Occupants of those Lots which are assessed a Neighborhood Assessment for such Neighborhood Assessment Area shall have the right to use such Neighborhood Assessment Area.

5.2.4. The Declarant and the Association shall each have the right to grant easements or licenses to Developers or other Persons for the construction of Improvements on the Common Area, and the Declarant and the Association shall each have the right to grant ingress and egress easements over the private streets and roads in the Project, if any, to Persons who are not Members of the Association.

5.2.5. The Declarant and the Association shall each have the right to convey certain portions of the Common Area to Owners of adjoining Lots in connection with the correction or adjustment of any boundary between Common Area and any one or more adjoining Lots; provided, however, that neither the Association

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nor the Declarant shall have the right to transfer or convey any portion of the Common Area upon which is situated any recreational facility unless approved by a vote of the Members as required hereby.

5.2.6. The Association shall have the right to charge Special Use Fees for the use of the Common Area. The Special Use Fees, if any, shall he set by the Board from time to time, in its discretion. Special Use Fees shall be charged only for actual entry upon or use of those portions of the Common Area, if any, selected by the Board to be, subject to a Special Use Fee; and shall be imposed only where the Board deems it appropriate to collect revenue from the actual users of such selected portions of the Common Area so that all of the costs of operating such selected portions of the Common Area are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other Persons using such selected portions of the Common Area.

5.2.7. The Association shall have the right to suspend the rights of any Owner or Occupant to use and enjoy recreational facilities on the Common Area: (1) for any period during which an Assessment remains delinquent; (2) for a period not to exceed 60 days for any infraction of the Association Documents; or (3) for successive 60 day periods if any such infraction is not corrected during any preceding suspension period.

5.2.8. Any suspension of a Person's right to use the Common Areas, except for failure to pay Assessments, shall be made only by the Board or a duly appointed committee thereof, after notice and an opportunity for a hearing in accordance with Association Rules and any applicable law. Notwithstanding the foregoing, the Association shall not have the right to suspend any Owner's right to use any portion of the Property (including Private Roads) necessary for the Owner to gain access to his Lot.

5.2.9. If a Lot is leased or rented by its Owner, the Occupants of such Lot shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area, except as necessary for reasonable and customary ingress and egress, until the termination or expiration of such lease.

5.2.10. If a Lot is leased or rented by its Owner, the Owner shall be responsible for assuring compliance by any Occupants or Users of his Lot with all of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines by the lessee or other Person.

5.2.11. 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

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any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

5.2.12. No Owner may exempt himself, and no owner shall be exempt, from personal liability for Assessments or release any Lot owned by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, by voluntary waiver of, or suspension or restriction of the Owner's right to, the use and enjoyment of the Common Areas, or the abandonment of the Owner's Lot.

5.3. **Declarant's Use and Easements.**

5.3.1. The Declarant shall have the right and an easement (which, in its discretion, it may delegate to and/or share with one or more Developers, upon and subject to such terms and conditions as the Declarant may deem appropriate) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area and Neighborhood Common Area with respect to the sales of Lots or other property in the Project or within any of the Additional Property. The Declarant reserves the right (which, in its discretion, it may delegate to and/or share with one or more Developers, upon and subject to such terms and conditions as the Declarant may deem appropriate) to place models, management offices and sales and leasing offices on any Lots or other property owned by the Declarant (or by such Developer(s), as applicable) and on any portion of the Common Area and Neighborhood Common Area in such number, of such size and in such locations as the Declarant deems appropriate.

5.3.2. So long as the Declarant is marketing Lots or other portions of the Property or the Additional Property, the Declarant shall have the right to restrict the use of the parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

5.3.3. The Declarant shall have the right and an easement on and over the Common Area to construct all Improvements the Declarant may deem necessary and to use the Common Area 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 Project and property adjacent to the Project.

5.3.4. The Declarant shall have the right and an easement upon, over and through the Common Area and Neighborhood Common Area as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by the Declarant in this Declaration.

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

5.4.1. 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;

5.4.2. For inspection, maintenance, repair and replacement of portions of the Common Area or Neighborhood Common Area accessible only from such Lots;

5.4.3. For inspection, maintenance, repair and replacement of Landscaping within the Landscape Easements, if any;

5.4.4. For correction of emergency conditions on one or more Lots, Neighborhood Common Area or on portions of the Common Area, accessible only from such Lots;

5.4.5. For the purpose of enabling the Association, the Board, the Design Review Committee or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Association Documents;

5.4.6. For inspection during reasonable hours of the Lots and Neighborhood Common Area in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Association Documents.

5.5. **Perimeter Wall Easement.** There is hereby created an affirmative easement in favor of Declarant, each Related Party, the Association, and their employees and agents, and imposed upon, over and across each Lot adjacent to the perimeter boundaries of the Property for reasonable ingress, egress, installation, replacement, maintenance and repair of any perimeter wall which Declarant or the Association elects to locate along a perimeter boundary of the Property, provided that neither Declarant nor the Association shall have any obligation to construct, or maintain if constructed, any such perimeter wall or fence.

5.6. **View Corridor Easements.** View Corridor Easements are hereby imposed upon each Lot. The Design Review Guidelines shall define with specificity the view corridor easements imposed on each Lot. The definition of the View Easement in the Guidelines is incorporated herein as though fully set forth herein. Each Lot Owner acknowledges the existence of the View Corridor Easement and

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accepts title to the Lot subject to the same.

5.7. **Easements for Ingress and Egress.** There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Area There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots and their guests, families, tenants and invitee. There is also hereby created an easement upon, across and over the Common Area and all private streets, private roadways, private driveways and private parking areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel.

6. ASSESSMENTS.

This Declaration provides for Assessments which are payable by Owners in addition to, not in lieu of, Regular Assessments and other charges payable to the Association pursuant to this Declaration.

6.1. **Creation of Lien and Personal Obligation.** Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay to the Association: Regular Assessments; Special Assessments; Capital Improvement Assessments, if applicable; and Neighborhood Assessments, if applicable. All Assessments shall be established and collected from time to time as provided in this Declaration. Each Assessment, together with interest and other costs, including but not limited to reasonable attorney's fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot (or Combined Lots) and shall be a continuing lien upon the Lot against which each such Assessment is made. The Assessment shall also be the personal obligation of the owner to whom the Assessment relates.

6.2. **Purpose of Assessments.** The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, and to pay the costs of administration of the Association and all other Common Expenses.

6.3. **Regular Assessments.**

6.3.1. Except as otherwise specifically provided herein, each Owner's Regular Assessment shall be the Owner's Proportionate Share of the Common

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Expenses and any applicable Neighborhood Assessment.

6.3.2. Not later than 30 days prior to the beginning of each fiscal year of the Association after Assessments commence, the Association shall make a pro forma operating statement or Board approved budget for the upcoming fiscal year available for review by each owner at the Association's office during reasonable times. The pro forma operating statement or budget shall, among other things, estimate the total Common Expenses to be incurred for the fiscal year. The Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owner. Each Owner shall thereafter pay his Regular Assessment to the Association in installments as determined by the Board of Directors. Each installment shall be due and payable on the date set forth in the Board Resolution.

6.3.3. If the Association determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for any reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Association shall immediately determine the approximate amount of the inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. if the estimated total Regular Assessments for the current year prove to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain the excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for a period of time deemed appropriate by the Board. No reduction or abatement of Regular Assessments because of any anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

6.3.4. In no event shall the board increase Regular Assessments by more than 20% of the Regular Assessments for the preceding year. In order to increase the annual assessment by more than twenty percent (20%), in any given year, the members, by a 2/3rd's majority of the voting power of the Association at a meeting must approve the increase. The Association is under no obligation to increase the Membership Assessment by twenty percent (20%) a year. In the event the Association does not increase the Membership Assessment by the maximum amount of twenty percent (20%) in any year, the Association shall not be deemed to have waived its right to do so in the future.

6.4. **Exemption of Unsold Lots.** Notwithstanding anything in this section to the contrary, no Assessments of any kind shall be levied upon, or payable with respect to, any Lot owned by Declarant, any Related Party to whom the Lot has been distributed by Declarant (as distinguished from having been purchased by the member), until the Lot has been conveyed by Declarant (or such Related Party) to an

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unaffiliated purchaser. PROVIDED, however, that prior to the Transition Date, the Declarant shall pay to the Association any deficiency in monies experienced by the Association as a result of Declarant not having paid an assessment. Declarant shall pay said sum within ten (10) days of written demand therefore by the Association. Any said deficiency shall constitute an assessment against all lots then owned by Declarant and shall be enforceable as such in the manner prescribed herein.

6.5. **Special Assessments.** Special Assessments shall be levied by the Association against an Owner and his Lot to compensate the Association for:

6.5.1. Costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines;

6.5.2. Any increased maintenance costs to the Association caused by the use or treatment of the Owner's Lot by the Owner or Occupant, or any guest, family member, invitee or other Person present on the Lot with the consent of the Owner or Occupant;

6.5.3. Any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws, Association Rules or the Design Guidelines;

6.5.4. Fines levied or fixed by the Board as provided herein; and

6.5.5 Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines.

6.6. **Capital Improvement Assessments.** In addition to the Regular Assessments, the Association may levy a Capital Improvement Assessment in any calendar year after 2002, applicable to that year only, for the purpose of defraying, in whole or in part, any action or undertaking on behalf of the Association in connection with, or the cost of, any construction or replacement of a described capital improvement upon the Common Areas or Areas of Common Responsibility, including the necessary fixtures and personal property related thereto. Without the vote of a Majority of Members (and, if prior to the Transition Date, the written consent of Declarant), the Association shall not impose a Capital Improvement Assessment in an amount which in any one year exceeds 5% of the estimated annual Common Expenses. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, shall not be included in determining this limitation on any annual Capital Improvement Assessment. All amounts collected as Capital Improvement Assessments may be used only for capital improvements (including any related fixtures and personal property) and shall be deposited by the

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Association in a separate bank account to be held in trust for those purposes. Any such amounts shall not be commingled with other funds of the Association.

6.7. **Neighborhood Assessments.** If the Association determines in the exercise of its reasonable judgment that a Neighborhood benefits in a substantial way from a particular feature, characteristic or service, and other Lots outside the Neighborhood do not benefit at all or to substantially the same degree from the feature, characteristic or service, the Association may levy a Neighborhood Assessment against each Lot within the Neighborhood, as part of the Regular Assessments, to compensate the Association for the incremental cost incurred in connection with the feature or characteristic, including maintenance, repair or replacement costs.

6.8. **Uniform Assessment.** The Regular Assessment and Capital Improvement Assessment for each Lot shall be uniform. The Neighborhood Assessment for each Lot in the affected Neighborhood shall be uniform.

6.9. **Exempt Property.** All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

6.10. **Transfer Fee.** When title to a Lot is conveyed by any Owner (including Declarant) to any other Person (except Declarant or a Related Party), the new Owner shall pay the Association a transfer fee in whatever amount may be required by the Board from time to time. The transfer fee shall be deposited into the Association's general operating account and used to defray costs of the Association arising from or related to any such change of ownership.

6.11. **Date of Commencement of Regular Assessments.** Regular Assessments for Lots which are subject to Assessment shall commence on the first day of the month following the date of conveyance of the first Lot to be conveyed by Declarant to anyone other than a Related Party. Regular Assessments for Lots within any Annexation Property which are subject to Assessments shall commence upon the effective date of the annexation.

6.12. **Time and Manner of Payment; Late Charges and Interest.** Payment of Assessments shall be as designated by the Board. The Board shall adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The Board may, at its discretion, establish late fees and charge interest on any Assessment not timely paid. If any suit, action or other proceeding is brought to collect any delinquent Assessment or charge, the costs of suit and reasonable attorneys' fees (to be fixed by the court) shall be added to the amount due and included in any judgment or award rendered thereon.

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The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration.

6.13. No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against the specified amount shall be permitted for any reason including, but not limited to, a claim that (a) the Association, the Board, the President or Declarant is not properly exercising its duties and powers as provided in this Declaration; (b) Assessments for any period exceed Common Expenses; (c) a Member has made, and elects to make, no use of the Common Areas; or (d) advance/prepayment of Assessments.

6.14. Reserves. When title to a Lot is conveyed by Declarant to anyone other than a Related Party, Declarant may require the new Owner of the Lot to make a contribution to the capital of the Association, in an amount to be determined from time to time by Declarant, to establish reserves of the Association. Notwithstanding the foregoing, Declarant shall have no obligation to collect or contribute to the reserves of the Association. In addition, the Board may, but shall not be required to, annually prepare a reserve budget which shall take into account the number and nature of replaceable assets, the useful life of each asset and the anticipated repair and replacement cost. If the Board establishes a reserve budget, the Board shall establish a required contribution to the Reserve for Capital Improvements, in an amount sufficient to permit the Association to meet its projected needs, as shown on the reserve budget, with respect both to amount and timing of annual Assessments over the period of the budget. Any required contributions to the Reserve for Capital Improvements shall be assessed as a portion of the Regular Assessment on each Lot. Any reserves collected upon the initial sale of a Lot as described above, and any additional reserves included in the Common Expenses which are collected as part of the Regular Assessments, shall he deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to nonprofit corporations or homeowners associations. The responsibility of the Board (whether while controlled by Declarant or the Members) shall be only to provide for an amount of reserves as the Board in good faith deems reasonable, and neither Declarant, nor the Board, nor any member thereof, shall have any liability to any Owner, to the Association, or to any other Person if the reserves prove to be inadequate.

6.15. Effect of Nonpayment of Assessments, Remedies of the Association.

6.15.1. Any Assessment, or any installment of an Assessment, not paid

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within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall 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 fifteen (15) days after such payment was due.

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

6.15.3. The Assessment Lien shall 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.

6.15.4. The Association shall 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 Association by the Owner of the Lot have been paid in full.

6.15.5. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys fees and any other sums due to the Association 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 (h) 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.

6.16. **Subordination of Lien.** Any lien which arises against a Lot because an Owner fails to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded Mortgage on the Lot, acquired in good faith and for value. Any unpaid Assessments which are extinguished as a result of a foreclosure proceeding shall continue to be the personal obligation of the delinquent owner and may also be reallocated by the Association among all Members as part of the Common Expenses. The Association may, in its discretion in acting in the best interest of the Association, compromise delinquent assessments with Lenders who acquire title procedure in lieu

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of foreclosure which does not eliminate the Association Lien.

6.17. **Certificate of Payment.** Any Person acquiring an interest in a Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments relating to the Lot, if any. Such a Person shall not be liable for, nor shall any lien attach to the Lot for, any amount in excess of the amount set forth in the certificate, except for Assessments which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to those Assessments.

6.18. **Evidence of Payment of Assessments.** Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating: (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 Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

7. INSURANCE

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

7.1.1. Property insurance on the Common Area and Area of Common Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided however, that the total amount of insurance shall 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 $2,000,000. Such insurance shall 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 Project which the Association is obligated to maintain under this Declaration, and shall 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;

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7.1.3. Directors and officers liability insurance or equivalent Association Liability insurance;

7.1.4. Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

7.1.5. Commercial crime insurance, including employee fidelity insurance, in an amount determined by the Board's best business judgment but not less than one-sixth of the Annual Assessments on all Lots plus reserves on hand. Such commercial crime insurance shall cover funds held by the Association's management company, unless such management company's insurance insures the Association against crimes committed by or against such management company. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

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

7.1.7. Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

7.1.7.1.The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

7.1.7.2.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 adversely affect recovery on the policy;

7.1.7.3.The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

7.1.7.4. A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Association or other Owners or Occupants;

7.1.7.5. Statement naming the Association as the insured;

7.1.7.6. For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial

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modification, reduction or cancellation of the policy.

7.2. **Certificates of Insurance.** An insurer which has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association 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 Association pursuant to this Declaration shall be included in the budget of the Association and shall be paid by the Association.

7.4. **Payment of Insurance Proceeds.** With respect to any loss to the Common Area or Areas of Common Responsibility covered by property insurance obtained by the Association, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any Mortgagee. Subject to the provisions of Section 8.5, the proceeds shall 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 which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners representing at least eighty percent (80%) of the total 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 either: (i) he retained by the .Association as an additional capital reserve; or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fitly percent (50%) of the votes in the Association.

7.6. **Non-Liability of Association(Board/President.** Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member nor the president of the Association nor Declarant shall be liable to any Owner, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each owner to ascertain the coverage and protection afforded by the

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Association's insurance and to procure and pay for additional insurance coverage and protection as the Owner may desire.

7.7. **Benefit.** Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for, the Association or the Owners, as their interests may appear.

8. MAINTENANCE, REPAIRS AND REPLACEMENTS.

8.1. **Owner's Responsibility.** Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Lot. In the event of damage to or destruction of structures on or comprising any Lot, the Owner of the Lot shall proceed promptly to repair or to reconstruct the structures in a manner consistent with the original construction or other plans and specifications approved by the Design Review Committee.

8.2. **Maintenance by Association.** Except as otherwise provided herein to the contrary, maintenance, repairs and replacements of the Common Areas and Areas of Common Responsibility shall be furnished by the Association as part of the Common Expenses, subject to the Bylaws and Association Rules.

If, due to the act or neglect of an Owner or any member of his family, or the invitee, guest or other authorized visitor of an Owner, or an Occupant of the Owner's Lot, damage is caused to the Common Areas, or Areas of Common Responsibility, or to a Lot or Lots owned by others; or if maintenance, repairs or replacement is required which would otherwise be a Common Expense, then the Owner shall pay for the damage and for maintenance, repairs and replacements determined necessary or appropriate by the Association, to the extent not covered by the Association's insurance. The foregoing obligation shall be a Special Assessment secured by the lien provided for herein.

8.3. **Right of Access.** An authorized representative of the Association, and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or Areas of Common Responsibility, or any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas or Areas of Common Responsibility, or to perform any of the Association's duties or responsibilities hereunder.

9. ARCHITECTURAL AND LANDSCAPE CONTROL.

9.1. **Aesthetic Controls.** The Refuge's Design Guidelines establish a system of controls and approvals for improvements within the Community to ensure

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the aesthetic quality and harmonious development of The Refuge, The Design Guidelines are in addition to the provisions of this Declaration.

9.2. **Appointment of Design Review Committee.** The Association shall have a Design Review Committee consisting of not less than three nor more than five individuals, as specified from time to time by resolution of the Board. Until such time as all Lots have been improved, the Design Review Committee shall consist of three (3) members, each of whom shall be appointed by, and serve at the pleasure of, the Declarant. Two members shall constitute a quorum. At such time as all Lots have been improved, the Design Review Committee shall consist of such number of members as the Board may deem appropriate from time to time but in no event less than three (3) nor more than five (5) regular members, two (2) members shall establish a quorum, each of whom shall be appointed by, and serve at the pleasure of, the Board. From and after the Transition Date, all members of the Design Review Committee must be Owners. The Golf Club Owner shall, at all times, be entitled to appoint one member of the Design Review Committee to exercise the rights of review vested in the Golf Club Owner hereunder. The rights of the Golf Club Owner shall not be adversely impacted should the Golf Club Owner not appoint a member. This right to appoint a member is intended to facilitate and expedite the rights of the Golf Club Owner.

9.3. **Design Guidelines.** The Design Review Committee shall establish Design Guidelines which shall be approved by the Board. The Design Review Committee may, from time to time with the Board's approval, amend, repeal or augment the Design Guidelines. The Design Guidelines are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all owners and other Persons having any interest in the Property as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Association's records.

9.4. **General Provisions.**

9.4.1. The Design Review Committee may assess reasonable fees in connection with its review of plans and specifications. Said fee shall be payable at the time the application for approval is submitted to the Design Review Committee. Such fee, if established and charged by the Design Review Committee, shall he set at such reasonable level as the Design Review Committee may estimate will be necessary to defray the reasonable costs and expenses of the Design Review Committee in reviewing and evaluating any such request or application, and may include, if the Design Review Committee deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the Design Review Committee by an architect, landscape architect or engineer.

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9.4.2. The Design Review Committee shall have the right to condition approval on receipt of a reasonable deposit to ensure compliance with the Association Documents. The amount of the deposit, if required by the Design Review Committee, shall be determined by the Design Review Committee and approved by the Board of Directors and shall be set at such reasonable level as the Design Review Committee may estimate will be necessary to defray the reasonable costs and expenses causing the construction to comply with the Association Documents. Upon satisfactory completion, in the sole discretion of the Design Review Committee, of the construction, installation, alteration, addition, repair, change, replacement or other work, the deposit shall be refunded to the Owner or other Person who paid the deposit. In the event the construction, installation, alteration, addition, repair, change, replacement or other work is not completed to the satisfaction of the Design Review Committee, then, without prejudice to any other rights, remedies or causes of action of the Association, the deposit shall be paid to the Association to be used, to the extent reasonably possible, to cause the construction to comply with the Association Documents.

9.4.3. The Design Review Committee may delegate its preliminary plan review responsibilities, except final review and approval required by the Design Guidelines, to one or more of its members or to architectural consultants retained by the Design Review Committee. Upon any delegation of responsibilities, the approval or disapproval of plans and specifications by the member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

9.4.4. The address of the Design Review Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines or by notice to Owners. That address shall be the place for the submittal of plans and specifications and the place where the current Design Guidelines shall be kept.

9.4.5. The establishment of the Design Review Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots otherwise specified in this Declaration, the Bylaws or Association Rules.

9.4.6. Any Owner or other Person desiring approval of the Design Review Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his, her or its Lot, or any Improvements located thereon, shall submit to the Design Review Committee, on a form provided by the Design Review Committee, a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change, replacement or other work which such Owner or other Person desires to perform. Any Owner or other Person requesting the approval of the Design Review Committee shall also submit to the Design Review

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Committee any additional information, plans and specifications which the Design Review Committee may reasonably request. In the event that the Design Review Committee fails to approve or disapprove an application for approval within thirty (30) days after the completed application, and together with all supporting information, plans and specifications required by the Design Review Committee Rules or reasonably requested by the Design Review Committee, have been submitted to it, approval will not be required and this section will be deemed to have been complied with by the Owner or other Person who submitted such application for approval.

9.4.7. The approval by the Design Review Committee of any construction, installation, addition, alteration, repair, change, replacement or other work pursuant to this section shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, replacement or other work subsequently submitted for approval.

9.4.8. Upon receipt of approval from the Design Review Committee for any construction, installation, addition, alteration, repair, change, replacement or other work, the Owner or other Person who has requested such approval shall proceed to perform, construct or make the installation, addition, alteration, repair, change or other work approved by the Design Review 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 Design Review Committee. The Design Review Committee may fix a fine of up to $10,000 for failure to obtain required approval from the Design Review Committee or for failure to comply with any approval given by the Design Review Committee.

9.4.9. Any change, deletion or addition to the plans and specifications approved by the Design Review Committee must be approved in writing by the Design Review Committee.

9.4.10. The Design Review Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Design Review Committee determines in its discretion that: (a) a restriction would create an unreasonable hardship or burden on an Owner or Occupant or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete; and (b) the activity permitted under the variance will not have any substantial adverse effect on Owners, Occupants, Golf Course and Golf Club Owner and is consistent with the high quality of life intended for residents of the Project.

9.4.11. The Declarant shall establish a list of approved builders authorized to construct improvements with the Project. Only contractors appropriately licensed in the State of Arizona and that satisfy the criteria of the Declarant shall be

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approved to construct improvements with the Project. The Declarant is vested with the sole and absolute discretion to approve or disapprove builders and to determine the number of approved builders. The Declarant shall have the right to limit the number of approved builders within the subdivision if to do so is in the interest of the community to enhance the quality of the development.

9.4.12. The provisions of this section do not apply to, and approval of the Design Review Committee shall not he required for, any construction, installation, addition, alteration, repair, change, replacement or other work by, or on behalf of, the Declarant.

9.4.13. The approval required of the Design Review Committee pursuant to this section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, or under any other recorded instrument. The Design Review Committee may condition its approval of any application, plans or other items submitted to it on delivery to the Design Review Committee of evidence satisfactory to the Design Review Committee that the Owner or other Person seeking its approval has also made appropriate applications for (and prior to commencing work shall have obtained) any and all such other approvals or permits. The Design Review Committee shall cooperate reasonably with any other approving authorities or entities, provided, however, that the Design Review Committee shall not be bound by any approvals, permits or other decisions of any other such approving authority or entity.

9.5. **Non-Liability for Approval of Plans.** Plans and specifications shall be approved by the Design Review Committee for compliance with the Design Guidelines as to style, exterior design, appearance and location. Plans will not be reviewed for engineering design or for compliance with zoning and building ordinances (or other governmental requirements). By approving plans and specifications, the Declarant, the Design Review Committee, the members thereof, the Association, the president and the Board assume no liability or responsibility therefore, or for any defect in any structure constructed from the plans and specifications. Neither the Declarant, the Design Review Committee, nor any member thereof, nor the Association, the president, or the Board shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development, or manner of development of any property within the Property; or (d) the execution and filing of an estoppel certificate pursuant to the Design Guidelines, whether or not the facts therein are correct; provided, however, that the action, with the actual knowledge possessed by the Person taking it, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that the plans or specifications comply with applicable governmental ordinances or regulations

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including, but not limited to, zoning ordinances and building codes.

9.6. **Reconstruction of Common Areas.** The reconstruction of any Common Areas or Association improvements to Areas of Common Responsibility after destruction by casualty or otherwise, which is accomplished in substantial compliance with "as built" plans, shall not require compliance with the provisions of this section or the Design Guidelines.

10. PERMITTED USES AND RESTRICTIONS.

10.1. **Residential Use and Trades or Businesses.** All Residences shall be used, improved and devoted exclusively, to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residence, except that an Owner or other Resident may conduct a business activity in a Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity conforms to all applicable zoning ordinances or requirements; (c) the business activity does not involve the door-to-door solicitation of Owners or other Residents in the Project; (d) the use of the Residence for trade or business shall in no way destroy or be incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business shall be conducted only inside the Residence or inside an accessory building, and shall not involve the viewing, purchase or taking delivery of goods or merchandise at, to, from or in any Residence, including excessive small package deliveries by US Postal Service, UPS, or Federal Express type carriers; (f) the trade or business shall be conducted by a Resident or Residents of the Residence with no employees; (g) no more than twenty percent (20%) of the total floor area of the Residence shall be used for trade or business; (h) the Residence used for trade or business shall not be used as a storage facility for a business conducted elsewhere; (i) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood; (j) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (k) a trade or business shall not utilize large vehicles not customary to a residential use. The terms "business" and "trade" as used in this section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this section.

10.2. **Height, Size and Setback Restrictions.** Height, size and setback

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restrictions for all Lots shall be set forth in the Design Guidelines. The Design Review Committee may, in its discretion, designate Neighborhood size restrictions.

10.3. **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 Residence or other building unless Concealed From View.

10.4. **Solar Collecting Panels or Devices.** The Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, the Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefore by the Design Review Committee, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property so long as such solar collecting panels and devices are placed, constructed and maintained in such locations, and with such means of screening or concealment as the Design Review Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed from any street or from any other property, or the Golf Club Owner and/or Golf Course (whether within or outside the Property). Notwithstanding any other provision of this Declaration to the contrary, the Declarant (prior to Transition Date) or the Board (after the Transition Date) shall have the right, without the consent or approval of any Owner or other Person, to amend this section (which amendment may, without limitation, impose additional or different restrictions on solar collecting panels and devices) as the Declarant or the Board (as applicable) deems appropriate in the event that, after the date this Declaration is recorded, Section 33-439 of the Arizona Revised Statutes (or any successor thereto) is amended, repealed or replaced.

10.5. **Fences and Walls.** Fences and walls shall be constructed in accordance with the Design Review Guidelines. Provided, however, fences and walls visible from the street or neighboring properties must be decorative (wrought iron, slump stone, split face or colored block) and there shall not be any fences of wood, wire or chain link, grey construction block, or topped with barbed wire. No Owner shall permit removal, alteration or painting of such fences or walls without the prior approval of the Architecture Committee. If an Owner fails to maintain such a fence or wall in accordance with the foregoing, the Association may perform such maintenance, and the cost thereof shall be assessed to the Owner as an Assessment.

10.6. **Exterior Lighting.** The Declarant intends for The Refuge Community to be a dark sky neighborhood affording all Owners a view of the night sky and all its brilliant stars undiminished by excessive light pollution. In order to

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fulfill this intent exterior lighting shall be limited to type and quantity. Exterior down lighting shall be permitted on a Lot so long as (a) such lighting is limited to that which is reasonably necessary for the safety and convenience of the Occupants of such Lot and when appropriate, motion sensor activated; (b) no up-lighting of any type shall be used; (c) no filament image, opal globes, or clear glass shall be used; (d) light sources must be concealed; and (e) such lighting also conforms to such requirements as may be imposed by the Design Review Committee. Landscape lighting is permitted provided it has been approved by the Design Review Committee and conforms to such requirements as may be imposed by the Design Review Committee. Notwithstanding the foregoing, but subject to reasonable regulation by the Design Review Committee, Owners or Occupants of Lots may display temporary holiday lighting during the Christmas season, provided that no such lighting shall be permitted from Thanksgiving to January 15 or such other permissible time frame established by the Board.

10.7. **Landscape.**

10.7.1. **Installation of Landscape.** A Developer or Owner, concurrent with the completion of a residence on a Lot, shall install Landscaping in the front (street-side) and side yards on corner lots commencing at the back of the curb and continuing to the front of the nearest portion of the residence, wall or fence. The Owner of a Lot shall install Landscaping in the back yard of the Lot which is not fully enclosed by a solid fence or wall at least six (6) feet high, not later than ninety (90) days after the completion of a residence on the Lot. All Landscaping must be installed in accordance with plans approved in writing by the Design Review Committee. If Landscaping is not installed on a Lot in the manner and by the applicable dates provided for in this section, the Association shall have the right, but not the obligation, to enter upon such Lot to install such Landscaping as the Association deems appropriate and the cost of any such installation (including a reasonable fee for administration) shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this section shall be secured by a Special Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments. For purposes of this section, a residence shall be deemed completed when a Certificate of Occupancy is issued by the County or subsequent municipality.

10.7.2. **Maintenance of Landscaping.** Each Owner of a Lot shall properly maintain and keep neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material, all Landscaping located on: (a) all areas of his, her or its Lot; (b) any public right-of-way or easement area which abuts or adjoins the Owner's Lot and which is located between the boundary line of his Lot and the back of curb of any street, sidewalk, bike path or similar area (unless assumed by the Association) and (c) any non-street public right-of-way or easement area adjacent to his Lot (unless

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otherwise directed by the Board); provided, however, that such Owner shall not be responsible for maintenance of any area over which: (i) the Association assumes the responsibility in writing; or (ii) the City, Mohave County or any other municipality or other governmental agency or entity having jurisdiction over such property, assumes responsibility, for so long as the City, Mohave County or such other municipality or other governmental agency or entity assumes or has responsibility. For purposes of this section, proper maintenance of Landscaping shall include, without limitation, removal and replacement of dead Landscaping, subject to the Design Review Committee Rules.

10.8. **Overhead Encroachments.** No tree, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, bicycle path or pedestrian way from ground level to a height of eight (8) feet without the prior approval of the Design Review Committee.

10.9. **Temporary Occupancy and Temporary Buildings.** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be maintained or kept on any portion of the Property or used at any time for a residence, either temporary or permanent.

10.10. **Mineral Exploration.** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by the Declarant.

10.11. **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot except in sanitary, covered containers of a type, size and style which are approved by the Design Review Committee. Such containers shall be maintained so as to be Concealed From View except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be maintained on any Lot.

10.12. **Model Homes.** Any provisions of this Declaration which prohibit the nonresidential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes (including, without limitation, any used in whole or in part as sales offices) (collectively, "Models") by Persons engaged in the construction of residences in the Project, or parking incidental to the visiting of such Models, so long as the construction, operation and maintenance of such Models and parking otherwise comply with all of the provisions of this Declaration. The Design Review Committee may also permit Lots and other areas to be used for parking in connection with the showing of Models. Any homes or other structures constructed as Models shall cease to be used as Models at any time the Owner or Lessee thereof is not actively engaged in the construction and sale of residences in the Project, and no home or other structure shall be used as a Model for the sale of homes or other structures not

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located in the Project. Neither the provisions of this section nor the provisions of any other Section of this Declaration shall restrict or prohibit the right of the Declarant or a related party to construct, operate and maintain Models in the Project.

10.13. **Rental/Lease.** The renting or leasing of Lots is permissible subject to the following restrictions: (1) the rental or lease agreement shall not be for a period of time less than four (4) months; daily, weekly and monthly rentals are expressly prohibited; (2) the Owner renting or leasing his Lot shall give notice thereof to the Association on a form promulgated by the Association; and (3) the Tenant or Lessee executes a receipt evidencing he, she or it has been provided a set of Association Documents and agrees to comply with the terms and provisions of the Association Documents. The Association shall be entitled to assess a reasonable fee for the Association Documents delivered to the Tenant or Lessee.

10.14. **Animals.** No animal, livestock, poultry or fowl or poisonous reptiles of any kind, other than a reasonable number of house pets, shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. All structures for the care, housing or confinement of any pet shall be Screened From View. Notwithstanding the foregoing, no pets may be kept on or in any Lot which, in the opinion of the Board, result in an annoyance to other Owners, Occupants or Golf Course Facilities in the vicinity. All pets shall be leashed when not on property owned by the pet's owner or on which the pet's owner is a Resident or guest, and persons walking any pet shall promptly and properly remove and dispose of the pet's waste. No Owner shall feed or undertake any action whatsoever that intentionally or unintentionally attracts wild animals or fowl with the exception of the feeding of song or hummingbirds.

10.15. **Signs.** No signs whatsoever (including, but not limited to commercial, political, "for sale," "for rent" and similar signs) which are not Concealed From View shall be erected or maintained on any Lot, Common Area or Area of Common Responsibility except:

10.15.1. Signs required by legal proceedings.

10.15.2. Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Design Review Committee.

10.15.3. Signs of Developers approved from time to time by the Design Review Committee as to number, size, color, design, message content, location and type.

10.15.4. Such construction job identification signs, business

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identification signs and subdivision identification signs which are in conformance with the requirements of any municipality having jurisdiction over the property and which have been approved in writing by the Design Review Committee as to number, size, color, design, message content and location.

10.15.5. Temporary "for sale" or "open house" signs shall be subject to any limitations for such signs as adopted by the Design Review Committee.

10.15.6. Signs required for traffic control, directions and regulation of Common Areas.

10.16. **Motor Vehicles.**

10.16.1. Except for emergency vehicle repair, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project, and no inoperable vehicle may be stored or parked on such Lot or other property in the Project.

10.16.2. No motorcycle, motorbike, all-terrain vehicle, off-road vehicle or any similar unlicensed vehicle shall be parked, maintained or operated on any portion of the Project except in garages or in areas concealed from view on Lots except as approved by Design Review Committee.

10.16.3. No automobile or other motor vehicle shall be parked on any road or street in the Project except as may be permitted by the Association's Rules and Regulations or as permitted by the easements granted in favor of the Golf Course Facilities. Violations of this provision by Guests of Owners or Residents may result in fines against an Owner, which shall be collectible as an Assessment. Owners or Residents shall park automobiles or other motor vehicles only in their garages or driveways and not park on the street. A recreational vehicle may be parked in an Owner's driveway for purposes of loading or unloading of the recreational vehicle for not more than twenty four (24) hours. A recreational vehicle may not be stored or kept in a driveway.

10.17. **Towing of Vehicles.** The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Association 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 is owned by an Owner, any amounts payable to the Association shall be a Special Assessment secured by the

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Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.

10.18. **Garages and Driveways.** The interior of all garages shall be maintained in a neat, clean and sightly condition. Garages shall be used only for parking vehicles and storage, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons for routine, normal use and maintenance.

10.19. **Utility Service.** No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, c-band dishes (1m or greater), television 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 approved by the Design Review Committee. Power poles or other transmission lines existing as of the date of the recording of this Declaration are excluded from the provisions of this section. No provision of this Declaration shall be deemed to .forbid the erection of temporary power or telephone structures for emergency purposes or incident to the construction of buildings or structures approved by the Design Review Committee. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel or other equipment on the outside front wall of a residence or other building facing the street running directly in front of or beside such residence.

10.20. **Basketball Goals, Play Structures or Fences.** No basketball goal, backboard, sports court or similar structure or device, and no swing-sets or other play structures or fences shall be placed or constructed on any Lot without the prior written approval of the Design Review Committee (including, without limitation, approval as to appearance, screening and location). Permanent Basketball Goals are prohibited.

10.21. **Antennas, Poles, Towers and Dishes.** No television, radio, shortwave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Lot unless such antenna, pole, tower or dish is fully and attractively concealed from view; if concealment is required by this Subsection, the method of concealment shall be subject to the rules and guidelines established by the Design Review Committee which shall be consistent with the Telecommunications Act of 1996. Nothing in this section shall be deemed to prohibit the Declarant from installing and maintaining flagpoles on, at or adjacent to model homes within the Project.

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10.22. **Tanks.** No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot. Nothing herein shall be deemed to prohibit use or storage upon any Lot, of a propane tank 5 gallons or less in size, incidental to the use of a residential barbeque, so long as any such tank is appropriately located, stored, used and/or screened, in accordance with the Design Review Committee Rules or as otherwise approved by the Design Review Committee, so as to be Screened From View.

10.23. **Fires.** Other than barbecues, in properly constructed barbecue pits or grills, and fire pits in compliance with the Association Rules and the Design Guidelines, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Lots nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Areas, or for other Owners.

10.24. **Clothes Drying Area.** No portion of any Lot shall be used as a drying or hanging area for laundry of any kind. All laundry facilities shall be provided within the buildings to be constructed on each Lot

10.25. **Maintenance of Improvements; Nuisance.** Without limiting any other provision in this section, each Owner shall maintain and keep his Lot and all Improvements at all times in a safe, sound and sanitary condition, and in good repair and shall correct any condition which deviates from the Association Documents or refrain from any activity which might constitute a nuisance or interfere with the reasonable enjoyment by other owners of their respective Lots or the Common Areas. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors, loud noises or loud music shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon or adjacent to any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. The Association shall have the right to determine the existence of any such nuisance and assess fines therefore enforceable as an assessment against the Lot as provided herein.

10.26. **Construction Activities.** Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration. During construction periods, Lots shall be kept in a neat and tidy condition. Trash and debris shall not be permitted to accumulate. Supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved in writing by the Design Review Committee. No loud music shall be permitted. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Design

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Review Committee, which may also require screening of the storage areas. The Association shall have the right to determine the existence of any such nuisance and assess fines therefore enforceable as an assessment against the Lot as provided herein. The provisions of this section shall not apply to construction activities of the Declarant. Construction Activity, specifically including but not limited to hours and days during which construction activity may occur shall be regulated by the Association in the Design Review Guidelines.

10.27. **No Further Subdivision; Compounds.** No Lot shall be divided or subdivided except as permitted by the terms of this provision. An Owner may combine two contiguous Lots into a single homesite with the consent of the County and the Design Review Committee. Any such combination of Lots shall not reduce or alter the memberships or the voting rights attributable to each Lot nor shall it reduce or otherwise alter the assessment obligation of each Lot pursuant to the terms hereof. Notwithstanding anything herein to the contrary, the Owners of two or more contiguous Lots may, with the consent of the County and the Design Review Committee, replat the Owners' Lots as a Compound which may include and provide for the construction of common recreation facilities on the Lots, in accordance with the Design Guidelines. The lien provided for herein as to each replatted Lot shall also extend to the Owner's interest in any common facilities constructed on the Lots. If one Owner wishes to combine Lots, or if two or more Owners wish to replat Lots as a Compound, in such manner that it eliminates the need for a portion of the Common Areas owned by the Association (for example, where a cul-de-sac is no longer necessary), and if the combination or compound and abandonment of Common Areas is approved by the Design Review Committee and the County, then that portion of the Common Areas may be deeded by the Association to the Owner or Owners as the Association (and the County, if such consent is required) may specify. Notwithstanding the foregoing, Declarant may amend any Plat prior to the date when any Lot within the Plat has been sold by Declarant and may adjust the Lot boundaries on any Plat for any Lots not yet sold.

10.28. **No Obstructions to Drainage.** No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on a Plat, or other binding document, as a "drainage easement" or similar designation, except that, with the prior consent of the Design Review Committee and governmental entity, if applicable. Non-permanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

11. AMENDMENT.

11.1. **Amendment to Declaration.** Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this

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Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Amendments may be adopted at a meeting of the Members upon the approval thereof of two-thirds of all of the Members or without any meeting if all Members have been duly notified and if two-thirds of all of the Members consent in writing to the amendment. In all events, the amendment when adopted shall bear the signature of the president and shall be attested by the secretary, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording in the Mohave County Recorder's office.

11.2. **Effect of Amendment.** It is specifically covenanted and agreed that any amendment to this Declaration, properly adopted, will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

11.3. **Required Approvals.** Notwithstanding the provisions of the foregoing
sections of this section:

11.3.1. Until the Transition Date, this Declaration may not be amended by the Members pursuant to this section without the written consent of Declarant, which may be withheld for any reason.

11.3.2. Any provision of this Declaration which specifically grants or reserves a right for benefit of Declarant may not be amended at any time without the consent of Declarant.

11.3.3. The provisions of this Declaration that inure to the benefit of the Golf Course Facilities/Owner may not be amended without the prior written approval of the owner of the Golf Course as provided by 5.10.

11.4. **Declarant's Right to Amend.** Notwithstanding any other provision of this section, until the Transition Date, Declarant reserves the right to amend this Declaration without the approval of the Board or the Members; provided that, after the conveyance of the first Lot to an Owner, Declarant may not amend the provisions of this Declaration without the approval of the Members if the amendment affects the number of Memberships attributable to each Lot or changes the number of votes for each Lot or Membership, or increases the cap on increases in Regular Assessments.

12. GENERAL PROVISIONS.

12.1. **Enforcement.** The Association or any Owner shall have the right to enforce, at law or in equity, the Association Documents. In addition to such other rights

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provided elsewhere herein, the Association shall have the right to enforce any of the rules and regulations of the Association and the obligations of any Owner or Resident under this Declaration or any provisions of the Association's Articles of Incorporation or Bylaws:

(i) by assessing a reasonable fine against such Owner or Resident, which said fine shall be enforceable as a Special Assessment;

(ii) recording a Notice of Violation or Noncompliance against Owner's property in compliance with Section 12.3 hereof;

(iii) suspending the right of such Owner or Resident to use Association Property: (1) for any period during which an Assessment remains delinquent, (2) for a period not to exceed 60 days for any infraction of the Association Documents, or (3) for successive 60 day periods if any such infraction is not corrected during any preceding suspension period; or,

(iv) suspending the right of such owner to vote at meetings of the Association.

No penalty may be imposed under this section until the Owner or Resident accused of any such violation has been afforded the right to be heard in person, by submission of a written statement, or through a representative at any such hearing. The Association may also take judicial action against any Owner or Resident to enforce complaints with such rules, regulations or other obligations or to obtain damages for violation, all to the extent permitted by law.

12.2. **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by this Declaration.

12.3. **Notice of Violation or Noncompliance.** The Association shall have the right to record a written Notice of a Violation or Noncompliance by any Owner or Occupant of any restriction or provision of the Association Documents. The notice shall be executed and acknowledged by an officer of the Association and shall 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 or Noncompliance; (d) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure

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the Violation or Noncompliance. Recordation of a Notice of Violation or Noncompliance shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a Violation or Noncompliance. If after the recordation of such notice, it is determined by the Association that the Violation or Noncompliance referred to in the notice does not exist or that the Violation or Noncompliance referred to in the notice has been cured, the Association shall record a Notice of Compliance which shall state the legal description of the Lot against which the Notice of Violation or Noncompliance was recorded, the recording data of the Notice of Violation or Noncompliance, and shall state that the Violation or Noncompliance referred to in the Notice of Violation or Noncompliance has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to record a Notice of Violation or Noncompliance shall not constitute a waiver of any existing Violation or Noncompliance or evidence that no Violation or Noncompliance exists. If, after the recording of the Notice of Violation or Noncompliance, the Violation or Noncompliance has not been cured, the Association shall have the right, upon not less than twenty-four (24) hours prior written notice, to enter upon any Lot for the purpose of curing the Violation or Noncompliance, including but without limitation, removal of any unauthorized improvements and restoration of the premises, removal of any unauthorized personal property and placing the same in storage at the expense of the defaulting Owner, repainting the exterior of any building which has been painted in an unapproved manner or color, replacement of any trees, or other vegetation which has died or been removed without approval and cleaning up any unsightly material or debris upon any Lot. Any such entry shall not be deemed a trespass. Any expenses incurred by the Association through the exercise of the right of entry to enforce the Declaration shall be enforceable as a Special Assessment against the Lot enforced as a lien.

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

12.5. **Laws, Ordinances and Regulations.**

12.5.1. 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 Design Review Committee with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations,

12.5.2. 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

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or all of the enforcement proceedings set forth herein.

12.6. **References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

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

12.8. **Notices.** Notices provided for in this Declaration, or the Bylaws or Association Rules, shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice of change of address to all Owners. All notices to Owners shall be to their respective Lots or to the last address shown on the records of the Association. Notices addressed as above shall be deemed delivered three days after deposited into the United States mail, postage prepaid certified return receipt requested or when delivered in person with written acknowledgment of the receipt thereof

12.9. **Captions and Exhibits; Construction.** Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where the reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

12.10. **Severability** if any provision of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or any Section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, and of the application of any such provision, Section, sentence, clause, phrase or word in any other circumstances, shall not be affected, and the remainder of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines shall be construed as if the invalid part were never included therein.

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12.11. Power of Attorney. Whenever the Association is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do any act including, but not limited to, actions in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner, the Owners and each of them hereby constitute and appoint the Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest, and by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each Owner and Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

13. EXEMPTION OF DECLARANT FROM RESTRICTIONS DURING PERIOD OF CONSTRUCTION AND SALES.

Notwithstanding anything contained in this Declaration to the contrary, but subject to any applicable provisions of the Refuge Declaration, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, any Related Party, the Golf Club Owner or their employees, agents and subcontractors, or parties designated by them in connection with the construction, completion, sale or leasing of the Lots, Common Areas, or any other portion of the Property or in connection with construction and operation of the Golf Club Facilities or promotion and sales of memberships to the Golf Club Facilities.

{Remainder of Page Left Intentionally Blank]

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Order: file Comment:

IN WITNESS WHEREOF, Declarant has caused this Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Refuge at Lake Havasu to be duly executed.

ZENN LHC, LLC, an Arizona limited liability company

By: Sienna Corporation, a Minnesota Corporation
Its: Managing Member

By: _____
John Hankinson
Its: President

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 16th day of September, 2008, by John Hankinson, the Vice President of Sienna Corporation, the managing member of Zenn LHC, LLC, an Arizona limited liability company, being authorized to do so on behalf thereof.

MARSHA A. PIERCE
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2010

_____
Notary Public

My Commission Expires: 1-31-2010

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Order: file Comment:

10651

EXHIBIT 'A'

LEGAL DESCRIPTION

Lots 1 through 14, Block 1; Lots 1 through 27, Block 2; Lots 1 through 26, Block 3; Lots 1 through 28, Block 4; Lots 1 through 29, Block 5; Lots 1 through 32, Block 6; Lots 1 through 15, Block 7; Lots 1 through 18, Block 8; Lots 1 through 38, Block 9; Lots 1 through 10, Block 10; Lots 1 through 39, Block 11; Lots 1 through 60, Block 12; and Lots 1 through 24, Block 13; and

Parcels H, I, J, K, L, M, N, O, P, Q, R; and

That portion of Parcel 'C' – Golf Course being more particularly described as follows:

COMMENCING at the common rear property line of Lots 15 and 16, Tract 3701, said point being a ½" rebar w/cap RLS 16209;

THENCE along the rear property lines of Lots 16 and 17, Block 3, Tract 3701, N. 29° E, (Basis of Bearings), 170.54 feet to a ½" rebar w/cap RLS 16209 and the Truce Point of Beginning, said point being the beginning of a non-tangent curve to the right having a radius of 89.98 fee, the cord of which bears S. 89° 32'01" E., a distance of 126.96 feet;

THENCE along said curve through a central angle of 89° 44'26" an arc distance of 140.93 feet to a ½" rebar w/cap RLS 16209 and the common rear property corner of Lots 21 and 22, Block 3, Tract 3701;

THENCE along the cord of said curve N. 89° 32'01" W., 126.96 feet to the True Point of Beginning.

All located in the Final Plat of Tract 3701, The Refuge at Lake Havasu, Mohave County, Arizona.

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PAGE: 1 of 4 FEE # 2009060520
B: 7599 P: 33
OFFICIAL RECORDS OF MOHAVE COUNTY
CAROL MEIER, COUNTY RECORDER
09/30/2009 04:09 PM Fee $14.00
DOC TYPE: ASN
PAID BY: PIONEER TITLE AGENCY - LAKE HAVASU

When Recorded Return To:

Home Federal Savings Bank
50 14th Avenue East, Suite 100
Sartell, MN 56337
(320) 654-4020

ASSIGNMENT OF DECLARANT RIGHTS

THIS ASSIGNMENT OF DECLARANT RIGHTS ("Assignment") is made effective as of the 4th day of August, 2009, by ZENN LHC, L.L.C., a Minnesota limited liability company ("Transferor") in favor of HOME FEDERAL SAVINGS BANK, a federally chartered stock savings bank organized under the laws of the United States ("Successor").

WHEREAS, Transferor organized The Refuge Community Association, an Arizona non-profit corporation, and has heretofore subjected, the real property legally described on Exhibit A (the "Property"), attached hereto and incorporated herein, to the terms and conditions of the Declaration of Covenants, conditions and Restrictions for The Refuge Community Association dated September 24, 2002, filed of record October 2, 2002, in the Mohave County Recorder's Office, as Document No. 2002064703, as supplemented by the Supplemental Declaration of Covenants, Conditions and Restrictions for The Refuge Community Association dated November 30, 2007, filed of record January 1, 2008, in the Mohave County Recorder's Office, as Document No. 2008002340, as amended and restated by an Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Refuge Community Association dated September 16, 2008, filed of record October 28, 2008, in the Mohave County Recorder's Office, as Document No. 2008071165 (collectively, the "Declaration"); and

WHEREAS, Transferor is the sole "Declarant" referenced in the Declaration; and

WHEREAS, the Declaration reserves to Transferor (as Declarant) certain Declarant rights; and

WHEREAS, Transferor and Successor wish to enter into this Assignment to provide for the transfer of the Declarant's rights under the Declaration from Transferor to Successor.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, representations, agreements and undertakings contained herein, and intending to be legally bound thereby, the parties hereto hereby agree as follows:

1. Transferor hereby grants, assigns, transfers and sets over unto the Successor, the Declarant rights set forth in the Declaration. Notwithstanding the foregoing, or anything contained within the Declaration to the contrary, Successor shall not be obligated to commence and/or complete any and/or all of the improvements, in whole or in part, contemplated within the

Declaration, it being understood that Successor shall have unilateral discretion in determining which, if any, of said improvements it will commence, complete and maintain within the Project. Transferor and Successor hereby acknowledge and agree that no third party may rely upon the foregoing assignment.

2. This Assignment shall constitute a perfected, absolute and present assignment.

3. Except as allowed pursuant to Paragraph 4 below, this Assignment can be waived, modified, amended, terminated, or discharged only explicitly in a writing signed by the parties hereto and properly recorded.

4. The Transferor and Successor acknowledge and agree that no third parties are intended beneficiaries of this Assignment and that no third parties may rely upon the transfer and assignment of Declarant rights pursuant hereto, nor may any third party enforce the terms and conditions of this Assignment and/or the Declaration against Successor as to any improvement contemplated by the Declaration which Successor chooses not to commence, complete or maintain. Should any third party attempt to enforce or otherwise impose any obligations upon Successor to commence, complete or maintain any improvements pursuant to this Assignment and/or the Declaration or any portion thereof, Successor, by a written document executed solely by Successor, shall have the unilateral right to release itself, retroactively and prospectively, from any and all liabilities, duties and/or obligations, in whole or in part, pursuant to the Assignment and/or Declaration.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date and year first above written.

TRANSFEROR:

ZENN LHC, L.L.C.

By: _____

Its: V P

STATE OF MINNESOTA)
) ss.
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 18th day of September, 2009, by Bruce G Nimmer, the V.P. of ZENN LHC, L.L.C., an Arizona limited liability company, on behalf of the company.

KNUTE PETER STALLAND
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES 01/31/2014

_____
Notary Public

Description: Mohave,AZ Document - Book.Page 7599.33 Page: 2 of 4
Order: Eddie Comment:

SUCCESSOR:

HOME FEDERAL SAVINGS BANK

By: _____
Marty Mixell
Its: Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF Benton)

The foregoing instrument was acknowledged before me this 23rd day of September, 2009, by Marty Mixell, the Vice President of HOME FEDERAL SAVINGS BANK, a federally chartered stock savings bank organized under the laws of the United States, on behalf of the bank.

STEPHANIE W. SCOTT
NOTARY PUBLIC - MINNESOTA
My Comm. Exp. Jan. 31, 2015

_____
Notary Public

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Order: Eddie Comment:

EXHIBIT A

Legal Description of Property

Lots 1 through 14, Block 1; Lots 1 through 27, Block 2; Lots 1 through 26, Block 3; Lots 1 through 28, Block 4; Lots 1 through 29, Block 5; Lots 1 through 32, Block 6; Lots 1 through 15, Block 7; Lots 1 through 18, Block 8; Lots 1 through 38, Block 9; Lots 1 through 10, Block 10; Lots 1 through 39, Block 11; Lots 1 through 60, Block 12; and Lots 1 through 24, Block 13; and

Parcels H, I, J, K, L, M, N, O, P, Q, R; and

That portion of Parcel "C" – Golf Course being more particularly described as follows:

COMMENCING at the common rear property line of Lots 15 and 16, Tract 3701, said point being a ½" rebar w/cap RLS 16209;

THENCE along the rear property lines of Lots 16 and 17, Block 3, Tract 3701, N. 29° E, (Basis of Bearings), 170.54 feet to a ½" rebar w/cap RLS 16209 and the Truce Point of Beginning, said point being the beginning of a non-tangent curve to the right having a radius of 89.98 feet, the cord of which bears S. 89° 32' 01" E., a distance of 126.96 feet;

THENCE along said curve through a central angle of 89° 44' 26" an arc distance of 140.93 feet to a ½" rebar w/cap RLS 16209 and the common rear property corner of Lots 21 and 22, Block 3, Tract 3701;

THENCE along the cord of said curve N. 89° 32' 01" W., 126.96 feet to the True Point of Beginning.

All located in the Final Plat of Tract 3701, The Refuge at Lake Havasu, Mohave County, Arizona.

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Order: Eddie Comment:

PAGE: 1 of 4 FEE # 2009060521
B: 7599 P: 37
OFFICIAL RECORDS OF MOHAVE COUNTY
CAROL MEIER, COUNTY RECORDER
09/30/2009 04:09 PM Fee $14.00
DOC TYPE: ASN
PAID BY: PIONEER TITLE AGENCY - LAKE HAVASU

When Recorded Return To:

Kyle B. Hettinger
Perkins Coie Brown & Bain P.A.
2901 North Central Avenue
Post Office Box 400
Phoenix, Arizona 85001-0400

ASSIGNMENT OF DECLARANT RIGHTS

THIS ASSIGNMENT OF DECLARANT RIGHTS ("Assignment") is made effective as of September 30, 2009 ("Effective Date"), by HOME FEDERAL SAVINGS BANK, a federally chartered stock savings bank organized under the laws of the United States ("Assignor"), and CITY CENTER EXECUTIVE PLAZA, LLC, an Arizona limited liability company ("Assignee").

Recitals:

A. That certain real property legally described on **Exhibit A** attached hereto (the "Property") is subject to the terms and conditions of the Declaration of Covenants, Conditions and Restrictions for The Refuge Community Association dated September 24, 2002, and recorded September 24, 2002 in Book 4210, Page 132 and re-recorded October 2, 2002 in Book 4221, Page 292 in the Mohave County Recorder's Office, as supplemented by Supplemental Declaration of Covenants, Conditions and Restrictions for The Refuge Community Association dated November 30, 2007, and recorded January 1, 2008 in Book 7074, Page 759 (Fee No. 2008002340) in the Mohave County Recorder's Office, as amended and restated by an Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Refuge Community Association dated September 16, 2008, and recorded October 28, 2008 in Book 7336, Page 991 (Fee No. 2008071165), as amended by an Amendment recorded April 13, 2009 in Book 7448, Page 947 and a Certificate of Amendment recorded June 19, 2009 in Book 7512, Page 270 in the Mohave County Recorder's Office (collectively, the "Declaration"). Capitalized terms not defined herein shall have the meanings set forth in the Declaration..

B. Assignor received an Assignment of Declarant Rights effective as of August 4, 2009 from Zenn LHC, L.L.C., and Assignor is the sole "Declarant" referenced in the Declaration.

C. Assignor is selling to Assignee a portion of the Property pursuant to a Purchase and Sale Agreement dated September 15, 2009, and in connection with such sale desires to transfer to Assignee all of the Declarant's rights under the Declaration.

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Order: Eddie Comment:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Assignment:

1. Assignment. As of the Effective Date, Assignor grants, assigns, transfers, conveys and sets over unto the Assignee, all of the Declarant rights as set forth in the Declaration.

2. Miscellaneous. This Assignment shall be governed by Arizona law. This Assignment contains the entire agreement between the parties with respect to the subject matter thereof. This Assignment shall be binding upon and inure to the benefit of the parties hereto and each of their successors and assigns. This Assignment may be executed in any number of counterparts, all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the Effective Date first above written.

Assignor:

HOME FEDERAL SAVINGS BANK

By: _____ VP
Marty Mixell
Its: Vice President

STATE OF Arizona)
) ss.
COUNTY OF Mohave)

The foregoing instrument was acknowledged before me this 30 day of September, 2009, by Marty Mixell, the Vice President of HOME FEDERAL SAVINGS BANK, a federally chartered stock savings bank organized under the laws of the United States, on behalf of the bank.

OFFICIAL SEAL
DONNA K. IMHAUSEN
Notary Public - State of Arizona
MOHAVE COUNTY
My Comm. Expires Feb. 5, 2010

_____
Notary Public

71848-0001/LEGAL17016222.2

Description: Mohave,AZ Document - Book.Page 7599.37 Page: 2 of 4
Order: Eddie Comment:

Assignee:

CITY CENTER EXECUTIVE PLAZA, LLC,
an Arizona limited liability company

By: _____

Its: member

STATE OF ARIZONA)
) ss.
COUNTY OF MOHAVE)

The foregoing instrument was acknowledged before me this 30 day of September, 2009, by Jerry Aldridge, the member of CITY CENTER EXECUTIVE PLAZA, LLC, an Arizona limited liability company, on behalf of the company.

_____
Notary Public

OFFICIAL SEAL
DONNA K. IMHAUSEN
Notary Public - State of Arizona
MOHAVE COUNTY
My Comm. Expires Feb. 5, 2010

71848-0001/LEGAL17016222.2

Description: Mohave,AZ Document - Book.Page 7599.37 Page: 3 of 4
Order: Eddie Comment:

EXHIBIT A

Legal Description of Property

Lots 1 through 14, Block 1; Lots 1 through 27, Block 2; Lots 1 through 26, Block 3; Lots 1 through 28, Block 4; Lots 1 through 29, Block 5; Lots 1 through 32, Block 6; Lots 1 through 15, Block 7; Lots 1 through 18, Block 8; Lots 1 through 38, Block 9; Lots 1 through 10, Block 10; Lots 1 through 39, Block 11; Lots 1 through 60, Block 12; and Lots 1 through 24, Block 13; and

Parcels H, I, J, K, L, M, N, O, P, Q, R; and

That portion of Parcel "C" – Golf Course being more particularly described as follows:

COMMENCING at the common rear property line of Lots 15 and 16, Tract 3701, said point being a ½" rebar w/cap RLS 16209;

THENCE along the rear property lines of Lots 16 and 17, Block 3, Tract 3701, N. 29° 47' 26" E, (Basis of Bearings), 170.54 feet to a ½" rebar w/cap RLS 16209 and the Truce Point of Beginning, said point being the beginning of a non-tangent curve to the right having a radius of 89.98 feet, the cord of which bears S. 89° 32' 01" E., a distance of 126.96 feet;

THENCE along said curve through a central angle of 89° 44' 26" an arc distance of 140.93 feet to a ½" rebar w/cap RLS 16209 and the common rear property corner of Lots 21 and 22, Block 3, Tract 3701;

THENCE along the cord of said curve N. 89° 32' 01" W., 126.96 feet to the True Point of Beginning.

All located in the Final Plat of Tract 3701, The Refuge at Lake Havasu, Mohave County, Arizona.

Description: Mohave,AZ Document - Book.Page 7599.37 Page: 4 of 4
Order: Eddie Comment: