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CAPTION HEADING:

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
ROCKING K

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**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND EASEMENTS FOR
ROCKING K**

Dated Aug 15, 2019

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND EASEMENTS FOR ROCKING K**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR ROCKING K is executed this 15 day of Aug, 2019, by Rocking K Development Co., an Arizona corporation ("**Declarant**").

RECITALS

A. Declarant is the owner of that certain real property described as follows

Lots 1 through 153, and Common Areas 'A' (Drainage and Open Space), 'B' (Natural Open Space and Riparian Mitigation) and 'C' (Private Streets), of Rocking K South Neighborhood 1 Parcel C, a residential project, recorded Sequence No. 20191910224, Pima County Records, being a resubdivision of a portion of Block 2 of the Amended Plat of Rocking K South Blocks 1-7, recorded Sequence No. 20182350104, Pima County Records;

Lots 1 through 145, Unit 1 and Common Areas 'A' (Drainage and Open Space), 'B' (Natural Open Space and Riparian Mitigation) and 'C' (Private Streets), of Rocking K South Neighborhood 1 Parcel D, a residential project, recorded at Instrument Sequence No. 20191910236, Pima County Records, being a resubdivision of a portion of Block 2 of the Amended Plat of Rocking K South Blocks 1-7, recorded Sequence No. 20182350104, Pima County Records;

Lots 1 through 101, and Common Areas 'A' (Drainage and Open Space) and 'B' (Natural Open Space and Riparian Mitigation), of Rocking K South Neighborhood 1 Parcel E-1, a residential project, recorded at Instrument Sequence No. 20191910249, Pima County Records, being a resubdivision of a portion of Block 2 of the Amended Plat of Rocking K South Blocks 1-7, recorded Sequence No. 20182350104, Pima County Records; and

Lots 1 through 159, and Common Areas 'A' (Drainage and Open Space) and 'B' (Natural Open Space and Riparian Mitigation), of Rocking K South Neighborhood 1 Parcel E-2, a residential project, recorded Sequence No. 20191910272, Pima County Records, being a resubdivision of a portion of Block 2 of the Amended Plat of Rocking K South Blocks 1-7, recorded Sequence No. 20182350104, Pima County Records.

B. Declarant desires to see that the said above described real property, being initial Covered Property, as defined herein, be developed as a part of a master planned community, with various residential uses, open spaces, recreational areas, trails, and other areas or facilities. This Declaration shall initially apply to the Covered Property, and shall apply to other land only upon

annexation of such other land and recordation of a Declaration of Annexation with respect thereto in accordance with the terms hereof. If and to the extent that additional land is annexed under the purview hereof, such additional land shall be deemed a part of the Covered Property and shall be subject to all terms and provisions hereof, except as otherwise may be stated in a Declaration of Annexation or in Additional Covenants or a Tract Declaration relating thereto.

C. The initial Covered Property is a part of that certain real property known as Blocks 1 through 7 of the Amended Plat of Rocking K South Blocks 1-7, a residential development, recorded Sequence No. 20182350104; Pima County Records, which said land is a part of the larger master-planned project known and marketed as "Rocking K," which larger project, to the extent not already Covered Property, shall together with other real property, and subject to the provisions hereof, be deemed a part of the Annexable Property.

D. Declarant desires and intends that the Covered Property, and such land as may be annexed from the Annexable Property, shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, which: (i) are for the purpose of protecting the value, desirability, attractiveness and character of the Covered Property; (ii) shall run with all of the real property comprising the Covered Property; (iii) shall be binding on all parties having any right, title or interest in the Covered Property, or any part thereof; and (iv) shall inure to the benefit of the aforementioned parties and their successors and assigns.

E. In the course of development, Declarant may record various Declarations of Annexation, Tract Declarations, Additional Covenants or other instruments which shall cover certain portions of the Covered Property or annexed areas to be specified therein.

F. Declarant has formed, or shall form, an Arizona nonprofit corporation known as "Rocking K South Master Association, Inc.", or to be known by any other designated name, for the purposes of, among other things: (i) holding title in fee or otherwise to certain Common Areas; (ii) fostering the efficient preservation of the Covered Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Areas and enforcing the Governing Documents; and (iii) establishing, collecting, disbursing and enforcing the Assessments created herein.

G. This Declaration shall be deemed to and shall amend, restate and replace, in their entirety, that certain Declaration of Covenants and Easements for Rocking K South Block Plat recorded Docket 13648 Page 114, Pima County Records, and that certain Declaration of Covenants, Conditions, Restrictions, and Easements for Rocking K recorded Sequence No. 20191910297, Pima County Records (the "Prior Declaration"), and is executed by Declarant herein as the assignee of all rights, powers, and privileges of the Declarant under the said Prior Declaration.

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

**ARTICLE 1
DEFINITIONS**

As used in this Declaration, the following terms shall have following meanings:

- 1.1 **"Additional Covenants"** Shall mean the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any Tract Declaration or other instrument which shall cover certain portions of the Covered Property to be specified therein.
- 1.2 **"Agency" or "Agencies"** Shall mean the Federal Housing Administration ("FHA"), Veterans' Administration ("VA"), Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and any other governmental agency or financial institution participating in the insuring, guaranteeing, purchasing or securitizing of home loans encumbering land within the Covered Property.
- 1.3 **"Annexable Property"** Shall mean any real property shown on any of the Plats and not already made a part of the Covered Property. The term shall also mean and include any other real property within two (2) miles of the Covered Property, as such property shall change from time to time (including real property across any public or private road).
- 1.4 **"Annual Assessments"** Shall mean the annual assessments levied by the Board pursuant to Section 9.2 of this Declaration.
- 1.5 **"Apartment Unit"** Shall mean a Dwelling Unit located on a portion of the Covered Property which has been designated as being for Apartment Use, the occupancy of which is or is planned to be governed by a rental agreement as defined in A.R.S. §33-1310(12).

- 1.6 "Apartment Use" Shall mean a development comprised of Apartment Units and the surrounding area integrated and under the same ownership.
- 1.7 "Architectural and Landscaping Review Committee" or "ARC" Shall mean the committee(s) formed pursuant to ARTICLE 4 of this Declaration. The ARC may elect to adopt any other name it may desire. The ARC, or the Reviewing Authority prior to appointment of the ARC, may perform the functions of the Rocking K Design Review Committee pursuant to the Specific Plan.
- 1.8 "ARC Guidelines" Shall mean the design guidelines initially adopted by the Declarant or by the Reviewing Authority with the approval of the Declarant, and thereafter by the Board to the extent provided for herein. The ARC Guidelines shall have the same force and effect as the Association Rules.
- 1.9 "Archeological Agreement" Shall mean that certain Programmatic Agreement relating to certain archeological, historic and other resources which may exist on the Covered Property, which agreement is by and between the United States Corps of Engineers, the Arizona State Historic Preservation Officer, and the Advisory Council on Historic Preservation, with concurring parties.
- 1.10 "Area Assessments" Shall mean Assessments levied against certain Lots or Blocks within the Covered Property to pay the budgeted expenses, including reserves, insurance, administration and other costs associated with Limited Common Area or associated with other costs and expenses attributable and allocable to a only a portion of the Covered Property, as described in Section 9.6.
- 1.11 "Articles" Shall mean the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.
- 1.12 "Assessments" Shall mean all Annual Assessments, Special Assessments, Area Assessments and Maintenance Assessments.
- 1.13 "Assessment Lien" Shall mean the charge and lien against a Lot or Block securing the payment of Assessments described in this Declaration.
- 1.14 "Assessment Period" Shall mean each period for which Assessments are to be levied against a Lot or Block pursuant to this Declaration, as more particularly described in Section 9.12 below.

- 1.15 **"Association"** Shall mean the "Rocking K South Master Association, Inc.", an Arizona nonprofit corporation, its successors and assigns.
- 1.16 **"Association Rules"** Shall mean the rules and regulations adopted by the Association pursuant to Section 7.3 and Section 12.2 of this Declaration.
- 1.17 **"Base Assessment"** Shall mean the Annual Assessment per Lot established by the Board pursuant to Section 9.2 of this Declaration.
- 1.18 **"Block"** Shall mean any parcel of land within the Covered Property, including a Block designated for Condominium Land Use, other than Common Area to be owned in fee title by the Association, and including any Block or portion thereof, and any other parcel, portion, pad, or subparcel thereof, if such parcel, portion, pad, or subparcel shall have been created by a parcel split or subdivision approved or permitted by Declarant or otherwise in accordance with this Declaration. Lots or Condominium Units shall not be included in the definition of a Block and any Block shall cease being a Block upon recording of a subdivision Plat or a declaration of condominium creating Lots or Condominium Units in regard thereto. In the case of the staged development of a Block having a Land Use Classification of Cluster Use, Single Family Detached Use or Condominium Use, those areas of such Block not yet covered by a recorded Plat or declaration of condominium creating Lots or Condominium Units shall continue to be a Block for purposes of this Declaration. Solely for determining votes of the Declarant or Class B Member, a Block shall include a block on any of the Plats, whether or not a part of the Covered Property. Without limitation upon the foregoing, Unit 1 as shown on the Plat for Rocking K South Neighborhood 1, Parcel D, until further subdivided, shall be deemed a Block, other than such portions as are designated as Common Area pursuant to the provisions hereof.
- 1.19 **"Block Plat"** Shall mean that certain Amended Plat for Rocking K South, Blocks 1-7, according to the plat of record in the office of the County Recorder, Pima County, Arizona, recorded Sequence No. 20182350104, being an amendment of that certain plat for Rocking K South, Blocks 1-14, recorded in the office of the County Recorder, Pima County, Arizona, in Book 64 of Maps and Plats at page 85 thereof.
- 1.20 **"Board"** Shall mean the Board of Directors of the Association.

- 1.21 "Bylaws" Shall mean the Bylaws of the Association, as amended or restated from time to time.
- 1.22 "Cluster Use" Shall mean, broadly, a use for any type of Dwelling Unit other than Single Family Detached Use and Apartment Use, and includes Residential housing arrangements known as "townhouses", "patio homes", "triplexes", "clustered housing", "zero-lot line housing" and similar arrangements. Such Dwelling Units are intended for Residential occupancy by a Single Family.
- 1.23 "Common Areas" Shall mean all real property and the improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled or operated by the Association (including, but not limited to, areas used for landscaping, flood control, drainage, equipment and maintenance yards or other storage areas, bicycle or jogging paths, parks, recreational areas, open space, walkways, equestrian trails and pedestrian and vehicular ingress and egress), or areas which the Association has undertaken to provide administrative, maintenance or other similar responsibilities. Common Area shall include Natural Open Space, including all Corps Restricted Property subject to the Corps Covenant which is owned or controlled by the Association. Unless the context otherwise requires, and without limitation upon any other term of this Declaration, Common Area may also include Limited Common Area for which the Association has undertaken responsibility, and may also include certain public trails, whether or not owned in fee by the Association. Public trails designated as such by Declarant, and over which the Association has undertaken maintenance, oversight or supervisory functions, as directed by Declarant, or as provided for herein, shall be deemed a part of the Common Area for purposes of maintenance, repair, replacement and insurance.
- 1.24 "Common Expenses" Shall mean the expenses incurred or to be incurred by the Association, as budgeted and estimated by the Board, for the benefit of the Members and Owners within the Covered Property generally, including, without limitation, reasonable reserves, all costs of maintenance and repair of Common Areas, management expenses, costs of insurance, the cost of third-party contracts, including contracts with landscaping and other contractors or consultants, security personnel, and all other matters, including all costs relating to the Corps Covenant and Corps Restricted Property.

- 1.25 **"Condominium Block"** Shall mean a Block designated in a Tract Declaration as having a Land Use Classification of Condominium Use.
- 1.26 **"Condominium Unit"** Shall mean a Dwelling Unit constituting a "unit" in a "condominium", together with any appurtenant interest in all "common elements", as such terms are defined in Chapter 9, Title 33, Arizona Revised Statutes, as amended.
- 1.27 **"Condominium Use"** Shall mean a development comprised or to be comprised of Condominium Units and the surrounding Common Elements, where each Condominium Unit is intended for Residential occupancy by a Single Family.
- 1.28 **"Corps"** Shall mean the United States Army Corps of Engineers.
- 1.29 **"Corps Covenant"** Shall mean that certain Declaration of Restrictive Covenants executed by Declarant in furtherance of the Corps Permit and recorded January 5, 2017, Sequence No. 20170050619, Pima County Records, as the same may from time to time later be amended.
- 1.30 **"Corps Permit"** Shall mean that certain Permit issued by the United States Army Corps of Engineers, Permit No. SPL-1997-4047500-RJD, and any amendments thereto.
- 1.31 **"Corps Restricted Property"** Shall mean that certain "Restricted Property" as more specifically set forth in the Corps Covenant, though only a portion thereof may initially be a part of the Covered Property.
- 1.32 **"County"** Shall mean Pima County, a body politic.
- 1.33 **"Covered Property"** Shall initially mean the land describe in Recital A above, and shall include such portions of the Annexable Property as may be annexed pursuant to the provisions hereof by recordation of a Declaration of Annexation, all subject to the further provisions of this Declaration dealing with annexation and withdrawal of land. The initial Covered Property includes all portions of the Corps Restricted Property lying within the boundaries of the Plats described in Recital A above, and shall include other portions of the Corps Restricted Property as such property is annexed under the purview hereof, including from the Block Plat. This Declaration applies solely to the Covered Property, with the exceptions that: a) Declarant's votes are calculated based on both the Covered Property and the land within the Annexable Property shown upon the Block Plat, whether Lots or Blocks; and b) the Association's obligations as provided herein extend to the Corps Covenant and to all Corps Restricted Property regardless of which portions have been

annexed as Covered Property.

1.34 "Declarant"

Shall mean Rocking K Development Co., an Arizona corporation, and any assignee of all or part of the rights and duties granted or reserved to Declarant.

1.35 "Declarant Affiliate"

Shall mean any Person owning any portion of the Covered Property or any Annexable Property and directly or indirectly controlling, controlled by or under common control with the Declarant, and includes any land trust of which Declarant is a beneficiary, including without limitation, Fidelity National Title Agency, Inc., Trust 60,380. The term includes any beneficiary of Declarant, and any trust, corporation, general or limited partnership, limited liability company or other entity of which Declarant is a member, shareholder, partner, limited partner or beneficiary, and any entity controlled by, under common control with Declarant, or which is a beneficiary of Declarant. Further, the term shall include any entity who Declarant in writing designates as a Declarant Affiliate for purposes of this Declaration.

1.36 "Declarant Control Period"

Shall mean the period of time from the date of recordation hereof until earlier of:

1.36.1 the period of time expiring after each of the following has occurred: i) Declarant no longer owns any portion of the Covered Property; ii) neither Declarant nor any Declarant Affiliate owns or has any right, by real estate contract, option agreement or otherwise, to acquire title to any portion of the real property shown upon any of the Plats, including the Block Plat, whether or not such land is a part of the Covered Property; and iii) eighty-five percent (85%) of the total number of Dwelling Units which are permitted to be built within the Covered Property and within the land shown upon any of the Plats, including the Block Plat, and eighty-five percent (85%) of the total buildable ground floor area of Non-Residential buildings which is permitted to be built within the Covered Property and within the land shown upon any of the Plats, including the Block Plat, have had certificates of occupancy (or the equivalent approval) issued and have been conveyed to Persons other than Declarant, a Declarant Affiliate, or Developer Owners, as such percentages are determined by Declarant in its sole discretion based upon the Specific Plan or other applicable zoning, as amended from time to time;

1.36.2 such date as Declarant in writing relinquishes its rights which may be exercised during the Declarant Control Period;

or

1.36.3 December 31, 2068.

The Declarant Control Period shall revive if after first expiring due to the events in Section 1.36.1, additional events occur, such as the annexation of property, or the acquisition of property, which would have allowed the Declarant Control Period to endure further if such events had occurred prior to initial expiration. Further, nothing herein shall prevent Declarant from waiving or relinquishing certain of its rights hereunder which may be exercised during the Declarant Control Period without declaring a total cessation of all such rights.

- 1.37 **"Declaration"** Shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Rocking K South, as amended or supplemented from time to time.
- 1.38 **"Declaration of Annexation"** Shall mean a declaration executed in accordance with the provisions hereof and annexing to the Covered Property any other real property, making such other real property subject to the purview, terms and conditions of this Declaration.
- 1.39 **"Delinquent Amount"** Shall mean any Assessment, or installment or portion thereof, not paid when due.
- 1.40 **"Developer Owner"** Shall mean a Person in the business of developing, leasing or selling real property and who has acquired four or more Lots or all or a portion of a Block in the Covered Property, in connection with, and in the course of, such business, for the purpose of developing, leasing or selling such Lots or Block. A Developer Owner shall include a land trust, land banker, optionor or a similar entity or nominee developing, owning or selling land for ultimate construction of Dwelling Units or buildings. A Developer Owner must in writing be designated as such by Declarant, and such designation may in Declarant's discretion be made effective retroactively.
- 1.41 **"Dwelling Unit"** Shall mean any building, or part thereof situated upon a Lot or Block and intended for use and occupancy as a residence by a Single Family. Dwelling Unit shall include a Condominium Unit.
- 1.42 **"Event of Foreclosure"** Shall mean the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust or other

encumbrance inferior in priority to an Assessment Lien.

1.43 "Exempt Property"

Shall mean the following areas now or hereafter located within the Covered Property, none of which are subject to Assessment, and no voting rights shall be associated therewith:

1.43.1 All Government Property;

1.43.2 School property;

1.43.3 All Common Areas, including Limited Common Areas, for so long as Declarant, a Developer Owner, or the Association is the owner thereof; and

1.43.4 All unmanned utility substations which provide utility services to all or any portion of the Covered Property unless and to the extent that the applicable Tract Declaration or other appropriate recorded instrument indicates such a Lot or Block is subject to Assessments.

1.44 "First Mortgage"

Shall mean any mortgage or deed of trust on any Lot or Block, or portion thereof, with the first priority over any other mortgage or deed of trust encumbering such Lot or Block, or portion thereof.

1.45 "First Mortgagee"

Shall mean the holder of any First Mortgage.

1.46 "Governing Documents"

Collectively refers to this Declaration, the Articles and Bylaws, the Association Rules and the ARC Guidelines, all as amended from time to time.

1.47 "Government Property"

Shall mean all land and improvements owned by or dedicated to a public or governmental agency or authority for so long as the public or governmental agency or authority is the owner or beneficiary thereof, except for land or improvements, or both, owned or operated by a public or governmental agency or authority acting in a proprietary capacity.

1.48 "Gross Acre"

Shall mean a gross acre of forty-three thousand five hundred sixty (43,560) square feet, rounded to the nearest one-hundredth.

1.49 "Improvement"

Shall mean any structure or improvement, including any Dwelling Unit or modification thereof, any patio, outbuilding, pool, wall, path, driveway, excavation, landscaping, fixture, antennae, satellite system, fence, coping, awning, sunshade, flagpole, or other structure or improvement or appurtenance, and including decorative or aesthetic changes, such as color

changes or changes to materials.

1.50 "Land Use Classification"

Shall mean a classification of a portion of the Covered Property, as described herein and as may be set forth in a Tract Declaration.

1.51 "Limited Common Areas"

Shall mean all areas designated by Declarant in a Tract Declaration, or on a recorded subdivision Plat approved by Declarant as an area to be used in common by the Owners or Occupants of some, but not all, of the Owners of Lots within the Covered Property, which areas shall be owned by the Association and maintained, repaired and managed at the expense of the Owners or Occupants of such Lots by imposition of Area Assessments, or which shall be owned by a Subsidiary Association established and levying assessments against such Lots for ownership, maintenance, repair and management of such areas.

1.52 "Lot"

Shall mean:

1.52.1 an area of real property within the Covered Property designated as a "Lot" on any recorded subdivision Plat and which has a designated Land Use Classification of Single Family Detached Use or Cluster Use; or

1.52.2 a Condominium Unit within the Covered Property.

Solely for determining votes of the Declarant or Class B Member, a Lot shall include a lot on any Plat, whether or not a part of the Covered Property.

1.53 "Maintenance Assessments"

Shall mean the Assessments, if any, levied by the Board pursuant to Section 9.10 of this Declaration.

1.54 "Member"

Shall mean any Owner or Person entitled to Membership in the Association, including Declarant for so long as Declarant is a Class A or Class B Member and whether or not Declarant owns any Lot or Block.

1.55 "Membership"

Shall mean with respect to the Association the rights and duties of Owners including Declarant, so long as Declarant is a Class A or Class B Member.

- 1.56 "Natural Open Space" Shall mean all natural open space within the Covered Property set aside by Declarant, or shown upon any Plat of a portion of the Covered Property as natural open space, as such areas may at Declarant's election change, including all Corps Restricted Property under the Corps Covenant, and shall further include such areas on any Plat recorded by any Developer Owner with the consent or approval of Declarant.
- Without limitation, such term shall include portions of individual Lots or Blocks within the Covered Property regulated by the Corps Covenant, as well as certain areas also described in the Corps Permit as open space or drainage areas, and that provide for mitigation of certain impacts of the development of the Covered Property.
- 1.57 "Non-Developer Owner" Shall mean any Owner who is not a Developer Owner.
- 1.58 "Non-Residential" or "Non-Residential Use" Shall mean, unless the context indicates otherwise, a use or classification for business, retail or commercial purposes.
- 1.59 "Occupant" Shall mean any Person, other than an Owner, occupying a Lot, or any portion thereof or building or structure thereon, as a Resident, Tenant, licensee or otherwise, other than on a merely transient basis.
- 1.60 "Owner" Shall mean the record holder of legal title to the fee simple interest in any Lot or Block or, in the case of a recorded "contract" (as that term is defined in A.R.S. §33-741(2)), the holder of record of the purchaser's or vendee's interest under said contract, but excluding others who hold such title merely as security, such as any trustee under a deed of trust. An Owner shall include any Person who holds record title to a Lot or Block in joint ownership or as an undivided fee interest.
- 1.61 "Person" Shall mean an individual natural person, a corporation, partnership, limited liability company, joint venture, individual, trust or any other legal entity.

- 1.62 "Plat" or "Plats" Shall initially mean, as the context may require: a) that certain Amended Plat of Rocking K South Blocks 1-7, recorded Sequence No. 20182350104 in the office of the Pima County Recorder, Pima County, Arizona, b) all of the plats referred to in Recitals A above; and c) any plat or plats resubdividing the said land, including successive future resubdivision plats of portions of the land shown upon any such Plat or Plats. The Plat or Plats may include land not yet made a part of the Covered Property, and such land shall become Covered Property only when annexed hereunder.
- 1.63 "Resident" Shall mean
- 1.63.1 each Owner who resides on the Covered Property and the members of the immediate family of each Owner who reside on the Covered Property;
- 1.63.2 each Tenant who resides on the Covered Property and the members of the immediate family of each Tenant who reside on the Covered property; and
- 1.63.3 such persons as the Board, in its absolute discretion, may authorize, including without limitation, guests of an Owner or Tenant.
- 1.64 "Residential" or "Residential Use" Shall mean use or occupancy of Apartments Units, Condominium Units, Single Family Detached Dwelling Units, or Dwelling Units in a Cluster Use, in each case for Residential purposes.
- 1.65 "Reviewing Authority" Shall mean the Person or entity appointed to review architectural and design plans and other submittals pursuant to Section 4.5 of this Declaration.
- 1.66 "Rincon Institute" Shall mean The Rincon Institute, an Arizona non-profit corporation.
- 1.67 "Rocking K" Shall mean, unless the context clearly indicates otherwise, the master-planned project evidenced by any of the Plats, except that nothing in this Declaration shall apply to real property not made a part of the Covered Property in accordance with the terms hereof.
- 1.68 "Single Family Detached Use" Shall mean a Residential Use comprised of Single Family detached Dwelling Units.

- 1.69 "Single Family" or "Single Family Use" Shall mean occupancy by a group of persons related by blood, marriage or legal adoption, or a group of not more than three unrelated persons maintaining a common household. "Single Family Use" shall not include any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, except that any prohibition of use or occupancy in this Declaration based upon limitation to Single Family Use shall not apply to living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.
- 1.70 "Special Assessments" Shall mean the Assessments, if any, levied by the Board pursuant to Section 9.5 of this Declaration.
- 1.71 "Specific Plan" Shall mean that certain "Rocking K Specific Plan" as amended, Pima County reference CO 23-96-02, and as thereafter amended and consolidated. Depending upon the extent of the real property annexed hereunder as a portion of the Covered Property, not all Covered Property may be impacted by the Specific Plan.
- 1.72 "Subsidiary Association" Shall mean an Arizona nonprofit corporation, its successors and assigns, established for the purpose of administering and enforcing the provisions of any Tract Declaration.
- 1.73 "Tenant" Shall mean a Person occupying any part of the Covered Property under any type of rental agreement, whether such rental agreement is within the definition set forth in A.R.S. §33-1310(12) or otherwise.
- 1.74 "Tract Declaration" Shall mean any declaration of covenants, conditions and restrictions or like instrument, including Additional Covenants, recorded in regard to one or more Blocks, or portions thereof, or group(s) of Lots, by Declarant or, with the approval of Declarant, by the Owner of such Blocks or portions thereof, or group(s) of Lots, which shall in all cases be consistent with and subordinate to this Declaration. The term shall include a Declaration of Annexation.
- 1.75 "Visible From Neighboring Property" Shall mean, with respect to any given object, that such object is or would be visible to a Person six feet tall, standing at ground level on neighboring property (including Common Area) six feet back from the property line of the neighboring property, provided, however, that the ARC shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the

determination of the ARC shall be binding in that regard, subject to any appeal rights to the Board.

ARTICLE 2
PROPERTY AND PERSONS BOUND
BY THIS DECLARATION

- 2.1 *General Declaration* Declarant desires to facilitate development of the Covered Property in accordance with this Declaration and applicable zoning in effect from time to time, including the Specific Plan. This Declaration establishes a general plan of development for the planned community known as Rocking K. This Declaration provides a flexible and reasonable procedure for the future expansion of the Covered Property and provides for its overall development, administration, maintenance and preservation. Though this Declaration has been adopted and established as the initial plan for the Covered Property, such plans may change, and nothing herein or in any other instrument shall be deemed a representation or warranty that land shall be developed as shown in the Specific Plan or by any other plan which may exist, or that any such plan may not materially be revised or changed at Declarant's discretion and in accordance with such applicable rules, regulations and zoning restrictions as may from time to time exist. Further, nothing herein shall be deemed a representation or warranty that any Annexable Property will be annexed under the purview hereof, or that the Covered Property will include any land other than the initial Covered Property. Declarant expressly reserves the right at any time to amend or modify the Specific Plan, any of the Plats, and any other plan or concept plan, schematic depiction or other rendition or depiction of the Covered Property, and to allow development to proceed under plans adopted and approved by Declarant in its sole and absolute discretion.

In accordance with the foregoing, as portions of the Covered Property are developed, Declarant, without obligation, may record one or more Tract Declarations creating Blocks or Lots, designating Land Use Classifications, designating Common Area and Limited Common Area, and may establish such master plans, project designs, and Additional Covenants as may be appropriate for the respective portions of the Covered Property. Nothing in this Declaration or in any Tract Declaration shall be construed to prevent or limit Declarant's right to amend or modify any part of this Declaration, any Tract Declaration, general plan or layout, or any Land Use Classification planned for the Covered Property, or from dedicating or conveying portions of the Covered Property

for uses other than as a Lot, a Block, or Common Area.

2.2 Owners and Occupants Bound

Upon the recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Block or Lot to or from such Owners or Occupants.

**ARTICLE 3
EASEMENTS AND RIGHTS OF ENJOYMENT**

3.1 Easements and Rights of Enjoyment

Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner's Lot or Block. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The Association may also own Limited Common Area the use of which is limited to the Owners of only certain groups or numbers of Owners or Members. The foregoing grants and rights are subject, among other things, to the following limitations:

3.1.1 The right of the Association, after such notice and hearing as may be required by law, and subject to such limitations as exist at law, to suspend the voting rights and the rights to use and enjoyment of the Common Areas (other than roadways) of any Owner or Occupant, as the case may be:

- (a) for any period during which an Assessment remains delinquent;
- (b) for a period not to exceed thirty (30) days for any infraction of this Declaration, a Tract Declaration, or the ARC Guidelines, or for so long as the Owner remains in violation, whichever is longer; or
- (c) for successive thirty (30) day periods if any such delinquency or infraction is not corrected during any preceding suspension period.

3.1.2 The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Areas; and,

3.1.3 The right of the Association to regulate use of the Common Areas in accordance with this Declaration and the Association Rules, and to mortgage or convey portions of Common Area, but subject to Declarant's approval during the Declarant Control Period and, thereafter, with such approvals as are required by the provisions hereof.

3.2 *Reserved Powers of Declarant and the Association*

Notwithstanding the foregoing, the Association may at any time convey, and Declarant may cause the Association to convey, minor, insignificant, or immaterial portions of Common Area (such as those caused by encroachment areas, boundary line discrepancies, survey errors and other such matters), and portions of Common Area or Limited Common Area determined by Declarant or the Board to be more burdensome or costly to own than the accompanying benefit to the Association would warrant, and such conveyance may be made without the consent or vote of any other Person or Member, should Declarant or the Board determine that such conveyance or transfer is in the best interests of the Association or Covered Property. Furthermore, Declarant may at any time resubdivide Common Area (other than Corps Restricted Property) and Limited Common Area into Lots, Blocks or other Common Area or dedicate land, and may cause the Board to execute such instruments as may be necessary to cause such resubdivision or dedication, and no consent or approval shall be required of any other Members nor shall a meeting of Members be required.

Any sale, disposition or resubdivision of the Common Area shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof.

In addition, the Association shall in all cases have the right to convey and dedicate to the public (or to public utilities) lands and interests such as public roads, streets, drainage ways, culverts, parks, sewer facilities and other Common Area, other than Corps Restricted Property, and such action shall not require the approval of any Owner or Member of the Association.

None of the foregoing provisions shall permit a dedication, transfer, conveyance or subdivision of Corps Restricted Property that would violate the Corps Covenant, nor shall any provision of this Declaration permit any use or occupancy of the Corps Restricted Property in any manner that would violate the provisions of the Corps Covenant.

3.3 Delegation of Use

Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his or her rights of use and enjoyment in the Common Area to the members of his or her family or his or her occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules, and in the event of such delegation, including any lease of a Lot, the Owner shall be deemed to have relinquished his or her right of use and enjoyment for the period of such lease or delegation. Without limitation, the Association Rules may limit the number of guests and prescribe restrictions or limitations on certain types of gatherings or events.

3.4 Waiver of Use

No Owner shall be exempted from personal liability for Assessments, nor shall the Owner's Lot or Block be released from liens or charges arising under this Declaration or any Tract Declaration, by waiver of any rights of use or enjoyment of the Common Areas, or for any other reason, and no Owner shall in any fashion or by any means have a right of set-off of claims against any sum owed to the Association.

3.5 Acceptance of
Certain Common
Areas

In the course of development and sale of land within the Covered Property, or within portions of the Annexable Property, fee title to land which in the future is to become Common Area or Limited Common Area may be held by, or transferred to, Persons acquiring fee title to portions of the Covered Property. Notwithstanding that fee title to such land may be held by Persons other than the Association (or Declarant), such land may, upon acceptance by the Association, become Common Area or Limited Common Area. If such areas become Common Area of the Association, whether by Tract Declaration, Plat or otherwise, then except as provided herein, and except with respect to the Corps Restricted Property, all Owners and Occupants shall have the easements, licenses and rights to the use and enjoyment of such Common Area as with respect to the other Common Area generally, unless such lands are Limited Common Areas or other specially restricted lands. Such rights shall be subject in all cases to the provisions of this Declaration and the Association Rules.

Notwithstanding the foregoing, Declarant shall have the absolute right to require that the Association accept title to future Common Area and open spaces shown upon any Plat or other instrument pertaining to the Covered Property, and such right of Declarant shall, without limitation, extend to all areas of the Annexable Property that Declarant determines are appropriate for Common Area designation or otherwise appropriate for Association control and maintenance, and shall include all Corps Restricted Property.

Future Common Area to be accepted may include, but shall not be limited to, recreational features, one or more parks, open spaces, trails, and other areas or facilities, but no representation or warranty is made as to any such facilities or which shall be offered or included in the Covered Property. It is acknowledged that should a future feature, such as a recreational amenity, be included within the Common Area, the Association shall have the right to increase Assessments by the maximum permitted by law to assure adequate funds, and shall further have the right to impose a Special Assessment during such initial fiscal years as may be necessary due to limitations upon increases in the Annual Assessment.

3.6 **Temporary Sign Easement**

Declarant hereby reserves to itself and its agents, successors and assignees a temporary easement over, upon and across those portions of the Common Areas and Limited Common Areas adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property, and otherwise promoting the Covered Property or any property owned by Declarant. The easement reserved hereby shall expire and terminate when neither Declarant nor any assignee of Declarant owns any portion of the Covered Property or Annexable Property shown on any of the Plats.

3.7 **Easements for Ingress, Egress and Utilities**

There is hereby created an easement in favor of Declarant and its assigns upon, over and under each Lot, each Block, the Common Areas and the Limited Common Areas for ingress to, and egress from, all portions of the Covered Property and for the installation, replacement, repair and maintenance of all utility equipment and service lines and systems (including electric, gas, telephone, cable, water and sewer), as such equipment, lines and systems are installed in connection with the development of Lots, Blocks, Common Areas and Limited Common Areas and the construction of buildings thereon; provided that such easements shall eventually be specifically and permanently described and fixed by recorded instrument either:

3.7.1 for all land with a Land Use Classification of Residential, at the time a subdivision Plat, approved as required by this Declaration, is recorded with respect to the portion of the Covered Property to be served or burdened by such easement(s), as applicable; or

3.7.2 for all land with a Land Use Classification of Non-Residential, within a reasonable time following approval, as

required by this Declaration and by the appropriate governmental agencies, of a site plan for the portion of the Covered Property to be served or burdened by such easement(s), as applicable, with the location thereof approved by the Owner of the land affected, such approval not unreasonably to be withheld.

3.8 *Exclusive Use and Benefit Easements*

On certain Common Area, particularly where perimeter or similar walls may be built (including yard walls, landscape walls, subdivision boundary walls and the like), such walls may be constructed within the Common Area at varying distances from the adjacent Lot line in order to avoid monotony of design. Portions of the Common Area may be located on the Lot side of any such dividing wall (each, an "Easement Area"). Each Easement Area will adjoin and be contiguous to a Lot (each, a "Dominant Lot"). The Association may, in its sole discretion, at any time and from time to time, grant to the Owner of a Dominant Lot a perpetual exclusive use and benefit easement over the Easement Area abutting that Dominant Lot for the use, benefit and enjoyment of that Owner (each, an "Easement"). Such Easement shall run with the land and be appurtenant to the abutting Dominant Lot and may not be sold, transferred or otherwise conveyed apart therefrom.

The Easements referred to in this Section 3.8 shall be limited to the extent that no other structure or improvement of any nature may be placed, maintained or permitted to remain in any Easement Area, except as provided below in this paragraph. The Association shall have no possession or control of the Easement Areas, except that the Association shall have the right of ingress and egress for the sole purpose of any maintenance and repair obligations the Association may have with respect to such dividing wall. Notwithstanding the restrictions on improvements in the Easement Area, the Owner of the Dominant Lot may use the Easement Area on such Dominant Lot for customary backyard purposes, including without limitation: drainage, the installation and maintenance of landscaping (including lawns, plants, trees, and sprinklers), and the installation and use of readily movable outdoor furniture, portable barbeque equipment, and other portable items.

Each Easement Area shall be possessed, controlled, maintained and insured by the Owner of the abutting Dominant Lot and not by the Association. Any separate insurance maintained by the Association is excess and non-contributory. Each Owner of a Dominant Lot shall indemnify, protect, defend and hold harmless the Association for, from and against any and all losses, costs, claims, actions, damages, expenses and liabilities of any kind

whatsoever arising from or in connection with the Easement Area abutting that Owner's Dominant Lot.

3.9 Maintenance of Perimeter Walls

While the maintenance of patio walls and yard walls is the responsibility of the Owner of the Lot benefited by such wall, or upon which the wall is located, the Association shall have the right, but not the obligation unless otherwise determined by the Board, to maintain the appearance of the exterior face of walls which are along the exterior boundaries or the Covered Property or which face a public or private street and which are continuous walls benefiting multiple Owners. The Association shall have an easement upon each Lot to enter upon such Lot for such maintenance, including painting, and the cost thereof shall be recovered as a part of the Annual Assessments and budgeted accordingly. Except with regard to a perimeter wall for which the Association has assumed full responsibility, any Owner of a Lot bordering or directly facing the interior surface of the wall shall be responsible for the maintenance of the appearance thereof.

3.10 Corps Restricted Property

Notwithstanding any provision of this Declaration to the contrary, no use of the Corps Restricted Property may be made that violates the provisions of the Corps Covenant, and none of the easements, or rights of passage or use, that apply to Common Areas pursuant to this Article 3 or any other provision of this Declaration shall apply to the Corps Restricted Property. Rather, all use and occupancy of the Corps Restricted Property shall be consistent with the Corps Covenant and shall be permissible only if in writing approved by the Association.

**ARTICLE 4
ARCHITECTURAL AND LANDSCAPING REVIEW COMMITTEE**

4.1 Control By Declarant

Each and every Owner, and all other Persons, by accepting a deed or otherwise having ownership, possession or control over any Lot or Block, agrees that Declarant, as the initial entity planning for the development of the Covered Property, and as an initial Owner of all or portions of the Covered Property, has a vital and legitimate interest in seeing the Covered Property developed in a manner consistent with Declarant's wishes and plans, as those plans may from time to time change.

4.2 Approval Required

In accordance with the foregoing, and as more specifically set forth below, no development, construction, grading, Improvement, landscaping or other work or alteration of any kind shall be commenced unless and until Declarant (or other

applicable Reviewing Authority) has given its prior written approval of same, which approval may be granted or denied in the sole and absolute discretion of Declarant. Declarant intends to and shall in writing, as more specifically set forth below, delegate certain or all of its rights of review and approval to the ARC, which shall be a committee of the Board, though Declarant may retain certain rights of review and approval and may also delegate certain of its rights of review and approval to others.

4.3 Reserved Rights of Declarant

In exercising its rights hereunder, including in the review, approval or denial of any application or request, and for so long as the Declarant Control Period shall exist, Declarant may act, or cause the ARC to act, in Declarant's interest and as Declarant determines based upon its desires for the Covered Property. Declarant's rights reserved hereunder may in writing be waived, terminated or assigned.

4.4 Delegation of Review Rights

Declarant may from time to time delegate all or a portion of its reserved rights hereunder to either or both of: (i) the ARC as appointed by Declarant or, if applicable, by the Board; or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association, it being acknowledged that certain portions of the Covered Property, including Non-Residential portions, may be treated differently, and may, at Declarant's discretion, be under the control solely of Declarant or, for example, and without limitation, a committee separate from that which reviews Residential Lots and Blocks.

Further, Declarant may, without limitation, elect to assign all responsibility for review and approval of alterations and modifications to construction and landscaping initially installed by a Developer Owner to the ARC, and to retain jurisdiction to review and approve original construction and landscaping activities by Developer Owners, whether with respect to Residential Use or Non-Residential Use.

Any delegation by Declarant to the ARC or to any other committee shall be in writing specifying the scope of responsibilities delegated and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically so delegates. Any delegation by Declarant, or approvals given, may be made

retroactively.

- 4.5 **Reviewing Authority** In accordance with the provisions hereof, Declarant may designate one or more Persons to act on its behalf in reviewing applications hereunder, and may assign it rights under this Article (including its rights to review and approve all required submittals or applications, and its right to adopt, amend or revoke the ARC Guidelines). Declarant shall be the initial Reviewing Authority until it delegates rights as permitted hereunder.

Any Person, including the ARC, delegated or assigned the power and authority to review and approve applications or submittals, or Declarant until such delegation or assignment has occurred, may, according to the context, be considered or referred to herein as the "Reviewing Authority." Upon any assignment or delegation, Declarant shall be fully released of all obligation and responsibility with respect to the functions of the Reviewing Authority so delegated or assigned. In any case in which Declarant has retained rights as the Reviewing Authority and has not assigned or delegated rights of review and approval to the ARC or other appropriate committee, the Association shall nevertheless, with Declarant's approval, have full right of enforcement of the provisions hereof, and may take legal and other action against any Owner or Person, or its or their agents, contractors and subcontractors, who may be in violation of the provisions hereof or of the ARC Guidelines, or who may have acted without approval of the Reviewing Authority. Declarant shall have full right and authority to cause the Association to take such action and to expend Association funds and resources in pursuit thereof, it being acknowledged that the Association and Members are or shall be benefited by such enforcement or other action.

- 4.6 **Organization of the ARC** The ARC is a committee of the Board, but appointed by Declarant for the periods of time set forth herein, and thereafter by the Board. The ARC shall be organized as provided in the Bylaws. A member of the ARC shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent or employee of Declarant or a Developer Owner. Declarant shall have the right to appoint and remove all regular and alternate members of the ARC so long as the Declarant Control Period shall exist, unless such right is in writing waived by Declarant.

4.7 ARC Guidelines

The Reviewing Authority, whether Declarant, the ARC, or other assignee, shall be guided in its functions by the ARC Guidelines. The initial ARC Guidelines may be adopted by Declarant or by the ARC with the approval of Declarant. Without limitation, the ARC Guidelines shall adequately deal with all provisions and architectural and design requirements of the Specific Plan and other applicable zoning. Subject to the written approval of the contents thereof by the Declarant during the Declarant Control Period, and thereafter subject to the written approval of the Board, the ARC may adopt, amend, and supplement the ARC Guidelines, which may be different for various portions of the Covered Property. The ARC Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for ARC review and the standards for development within all or various portions of the Covered Property. Nothing herein shall preclude Declarant from enforcing design standards without first having adopted formal, written ARC Guidelines. The ARC Guidelines, when adopted, may include, without limitation, provisions regarding:

4.7.1 the size of and maximum Lot coverage for Single Family Dwelling Units;

4.7.2 architectural design of Improvements, with particular regard to the harmony of the design with surrounding structures and topography;

4.7.3 placement of buildings or other Improvements;

4.7.4 landscaping design, content and conformity with the natural desert character of Rocking K;

4.7.5 requirements concerning exterior color schemes, exterior finishes, and materials, and requirements concerning yard and building ornaments (Visible From Neighboring Property), including, but not limited to, "Holiday" displays and decorations (and the permissible duration of such displays), recreational equipment, exterior lighting and exterior furniture (Visible From Neighboring Property), and other items or Improvements Visible From Neighboring Property;

4.7.6 signage and mailboxes, with certain subdivisions or classes of Dwelling Units being required to have group mailboxes or mailboxes of a specific type or appearance; and

4.7.7 perimeter and screen wall design and appearance.

The ARC Guidelines shall have the same force and effect as the Association Rules.

4.8 *Powers and Duties
Upon Assignment*

It shall be the duty of the Reviewing Authority to consider and act upon all proposals or plans submitted to it pursuant to the provisions hereof, to adopt the ARC Guidelines with the approval of Declarant during the period for which Declarant has the power to appoint the members of the ARC, or the approval of the Board thereafter, and to perform any other duties delegated to it, including duties imposed by this Declaration. The Reviewing Authority shall have the right from time to time, with the consent of Declarant during the Declarant Control Period or the Board thereafter to assign certain of its powers, authority and duties hereunder to one or more Subsidiary Associations, if any.

4.9 *Obligation to Obtain
Approval*

Except as otherwise expressly provided in this Declaration or the ARC Guidelines or any applicable Tract Declaration, without the prior written approval by the Reviewing Authority (whether Declarant, the ARC, or other designee or assignee) of plans and specifications prepared and submitted to such Reviewing Authority in accordance with the provisions of this Declaration and the ARC Guidelines:

4.9.1 No Improvements, alterations, repairs, excavation, grading, landscaping or other work shall be done which in any way alters the exterior appearance of any property or Improvements thereon from their natural or improved state (unless permitted by the ARC Guidelines in the case of private rear yard areas not Visible From Neighboring Property); and

4.9.2 No building, fence, exterior wall, pool, roadway, driveway or other Improvement or grading shall at any time be commenced, erected, maintained, altered, changed or made on any Lot or Block.

4.10 *Landscaping*

No exterior trees, bushes, shrubs, plants or other landscaping shall be planted, maintained or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Reviewing Authority in accordance with the ARC Guidelines, and except for replacements of plants previously approved and which remain acceptable in accordance with the then current ARC Guidelines (and except for landscaping if any permitted by the ARC Guidelines in the case of private rear yard areas not Visible From Neighboring Property).

4.11 Original Landscaping or Changes to Landscaping

Landscaping existing or which is originally planted on or about the Common Areas, or even along or inside public rights of way, may exceed or differ from landscaping that is ultimately planned for Common Areas or other such areas, whether due to over-planting in anticipation of normal plant losses or otherwise. The Board shall at all times have the authority in its discretion to remove and not replace any landscaping, including dead or damaged landscaping, and in replacing landscaping the Board may authorize landscaping at different locations or with different specific kinds of plants, other than those initially existing or planted. Neither the Board nor Declarant shall in any case be responsible for replacement of landscaping that dies or that requires replacement due to vandalism, lack of proper watering or otherwise.

4.12 Changes and Deviations

No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the Reviewing Authority, shall be permitted without approval of the change or deviation by the Reviewing Authority.

4.13 Waiver and Variance; Verbal Statements

The Reviewing Authority may grant variances and waivers from the requirements of the ARC Guidelines if it believes it is in the best interests of the Covered Property to do so or if hardship justifies the variance. In addition, Declarant may at any time grant a variance or waiver. The inability to obtain approval of any governmental agency, the issuance of any permit, or to obtain the approval of any financing shall not be considered a hardship warranting a variance. The approval by the Reviewing Authority of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Reviewing Authority, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval. In no event shall the Reviewing Authority, whether Declarant, the ARC or other assignee, or any member thereof, be bound by any verbal statements. Any waiver or variance to be granted by the Reviewing Authority must be approved by Declarant during the Declarant Control Period.

4.14 Liability

The Reviewing Authority, whether Declarant, the ARC or other assignee (nor any member thereof), shall not be liable to the Association, to any Owner or to any other Person for any damage, loss or prejudice suffered or claimed on account of:

4.14.1 the approval or disapproval of any plans, drawings or

specifications, whether or not defective;

4.14.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

4.14.3 the development of any Lot or Block; or

4.14.4 the execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct.

Without in any way limiting the generality of any of the foregoing provisions of this Section, the Reviewing Authority, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner (other than the Owner applying for consent or approval, whose views the Reviewing Authority shall be required to hear) with respect to any plans, drawings, specifications, or any other proposal submitted for review.

- 4.15 Appeal to the Board** Any Owner who initially made application to the Reviewing Authority, and who is aggrieved by a decision of the Reviewing Authority, may appeal the decision to the Board in accordance with procedures to be established in the ARC Guidelines or the Association Rules. In the event the decision of the Reviewing Authority is overruled by the Board on any issue or question, the prior decision of the Reviewing Authority shall be deemed modified to the extent specified by the Board. There shall be no appeal from a decision of the Declarant acting as the Reviewing Authority, and no appeal from a decision of the ARC may be taken so long as Declarant has the right to appoint the members of the ARC pursuant to the Bylaws or this Declaration.

The Association, the ARC and the Declarant shall, notwithstanding the foregoing, comply with the applicable provisions of A.R.S. §33-1817.

- 4.16 Fees** The Reviewing Authority may establish a reasonable processing fee to defer the costs of the Reviewing Authority in considering any requests for approvals or for appeals, which fee shall be paid at the time the request for approval or review is properly submitted.

In addition, the Reviewing Authority may implement:
a) refundable and non-refundable fees and deposits for revegetation and restoration of any site, with a portion of a fee being non-refundable should an Owner default in its obligations to restore or revegetate a site when required hereunder or by the Reviewing Authority, or should the Association or Reviewing

Authority incur cost as a result thereof; b) refundable and non-refundable fees to assure that all damage or degradation to Common Area, streets and roads caused or to be caused by construction traffic is promptly repaired or otherwise addressed by the Owner responsible therefor, or to enable the Association to accomplish such work, itself, or to establish a fund for future restoration of such areas; and c) such deposits as may be appropriate to assure completion of components of any work that may interrupt or interfere with the use of Common Area or operations of the Association.

Notwithstanding the foregoing, the Association shall comply with A.R.S. §33-1817 governing the treatment of deposits, required inspections and processes by the ARC, and other matters.

4.17 Inspection

Declarant and any member or authorized consultant of the ARC or Reviewing Authority, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Block, after reasonable notice to the Owner of such Lot or Block, in order to inspect the Improvements constructed or being constructed on such Lot or Block to ascertain that such Improvements have been, or are being, built in compliance with the applicable approved plans, the ARC Guidelines, this Declaration, and any applicable Tract Declaration.

4.18 Compliance with Specific Plan

The ARC Guidelines shall be enforced consistently with the purposes and standards set forth in all applicable zoning ordinances and regulations, including those in the Specific Plan, where applicable, as such zoning may from time to time change. Among other regulatory frameworks, including ordinances addressing density transfers and other land use matters, the Specific Plan, where applicable, includes standards governing project layout, permitted uses, maximum densities, perimeter wall design, landscaping, street design and other regulations.

4.19 Exempt Property

Any Owner of Exempt Property, except for property which is:

- a) Common Area of the Association;
- b) within a Public Use classification and used by a public or municipal entity, or by a private service corporation, for utility purposes including water, sewer, effluent or electricity;
- c) within a School Use classification and used for a public school; and

d) designated and used for parks or trails,

shall nevertheless remain subject to reasonable architectural review and approval by the ARC, and the Owner thereof shall be required to submit plans and specifications for approval of Improvements, structures and landscaping as required herein.

**4.20 Special Provisions
Applicable to Non-
Residential Blocks**

4.20.1 Only those portions of the ARC Guidelines expressly applicable to Non-Residential Use, and which have in writing been approved by Declarant, shall apply to any Non-Residential Blocks, and, after expiration of the Declarant Control Period, the Owners of such Non-Residential Blocks shall be entitled to at least one voting representative on the ARC, as determined among such Owners.

4.20.2 The ARC shall not act in any discriminatory manner toward such Non-Residential property and the ARC Guidelines shall not be amended to impose new conditions applicable to such property or to establish new guidelines or conditions unless approved in writing by Declarant. No special fee or charge, nor any levy, may be made against any Owner within such Non-Residential Block, except that a reasonable fee for submittal of plans may be charged as set forth in the ARC Guidelines.

4.20.3 All decisions of the ARC with respect to the Non-Residential Blocks shall be reasonable, and any aggrieved Owner may pursue legal and equitable remedies in court should approval be denied for unreasonable reasons. Unless Declarant otherwise agrees in writing, including by virtue of a Tract Declaration, no restriction, rule, condition or guideline for design may operate to restrict or prohibit any Non-Residential Use of the Non-Residential Blocks allowed by the Specific Plan or other applicable zoning, nor to lessen the density or intensity of use.

4.20.4 Those provisions of this Section 4.20 specifically addressing the rights of Owners of Non-Residential Blocks may not be materially amended without the consent, in writing, of Declarant for so long as the Declarant Control Period exists, and thereafter, the consent, in writing, of a majority of Owners within the Non-Residential Blocks by area and number.

ARTICLE 5
LAND USE CLASSIFICATIONS, PERMITTED USES AND
RESTRICTIONS

5.1 Land Use
 Classifications

5.1.1 Establishment of Land Use Classifications. As portions of the Covered Property are readied for development, Land Use Classifications may be fixed by Declarant in a Tract Declaration which may be recorded at such time as the applicable portion of the Covered Property is conveyed by deed or, if retained by Declarant, at such time as Declarant begins development thereof. If any provision of a Tract Declaration is inconsistent with any provision of this Declaration, the provisions of this Declaration shall control.

5.1.2 Approval by Declarant Required. Except with respect to Covered Property owned by Declarant, no Tract Declaration, or further covenants, conditions, restrictions, or easements, or any amendments or modifications thereto, shall be recorded against any Lot or Block without the written approval of Declarant or, if Declarant has waived and relinquished such right, of the Board, and without such approval such Tract Declaration or further covenants, conditions, restrictions, and easements, or any amendments or modifications thereto, shall at Declarant's option be deemed null and void. All Tract Declarations or other recorded covenants, conditions, or restrictions, or any amendments or modifications thereto, shall be consistent with and subordinate to this Declaration and shall contain such provisions as Declarant shall reasonably require. After expiration of the Declarant Control Period, the right to approve of any Tract Declaration shall rest with the Board.

The Land Use Classifications contemplated as of the date of this Declaration are:

5.1.3 "Single Family Detached Use";

5.1.4 "Cluster Use";

5.1.5 "Condominium Use";

5.1.6 "Apartment Use";

5.1.7 "Non-Residential Use" (office, retail, etc.);

5.1.8 "Common Areas";

5.1.9 "Public Use"; which may include parks, open spaces, and recreational trails, and uses by fire departments, or by utilities,

including for water lines, well sites, booster or storage tank sites, pumping sites, electrical substation sites, maintenance facilities, and similar facilities; and

5.1.10 "School Use".

Notwithstanding the foregoing listing, Declarant shall not be obligated to establish within the Covered Property each of the uses listed above, nor shall such listing prohibit the establishment by Declarant of other Land Use Classifications. Without limitation, certain Non-Residential Uses may be established near or adjacent to the Covered Property, without being annexed hereunder, and the Covered Property may or may not actually contain Non-Residential Uses. Furthermore, Land Use Classifications established by Tract Declarations or otherwise may at any time and in Declarant's sole and absolute discretion be changed or modified, and no Owner shall have any right or expectation that any land within the Covered Property will be used for any specific purpose, or that certain uses thereof cannot be made, nor shall any Owner have any right to rely on any alleged statement or representation with regard to planned or anticipated Land Use Classifications, it being understood that market conditions, changed circumstances and other factors will ultimately determine the specific use that will be made of any particular parcel of property and that proposed Land Use Classifications may change from time to time, even as to the same property.

Nothing in this Declaration shall in any way constitute a representation or warranty of any kind that any use will or will not be made of any portion of the Covered Property, and new or different Land Use Classifications can be established or eliminated. Without limitation, none of the provisions of this Declaration shall be deemed a representation that such uses will or will not exist or occur, nor a representation of the content of any Tract Declaration later recorded with respect thereto. Any or all of the Covered Property may be rezoned and the use thereof, or of portions thereof, may be changed, and the Specific Plan and other applicable zoning may be changed in whole or in part.

5.2 *Non-Residential Disclosure*

Each Owner acknowledges that Non-Residential Use can entail uses involving greater noise, traffic, and other activity within the Covered Property. Non-Residential Use may exist close to Residential Uses, and may entail odor or other effects from cooking, exterior lights or lighting that endures into the evening hours, music and other matters that could be considered an inconvenience. All Owners agree that such inconveniences are expected and shall be normal with respect to all Non-Residential Use, subject only to the discretion of the Association where a nuisance or other violation exists.

5.3 *Tract Declarations*

5.3.1 Tract Declarations. The characteristics of land within a Land Use Classification, and the specific permitted and prohibited uses of the real property within a particular Land Use Classification may be set forth in the respective Tract Declaration. Such uses, as more specifically provided herein, may at any time be changed or amended to permit other uses. Declarant's approval shall be required to amend any Tract Declaration during the Declarant Control Period.

5.3.2 Establishment Prior to Use. A Lot or Block shall, prior to being used or improved, be defined and limited to a specific development type or Land Use Classification by a Tract Declaration approved by Declarant in accordance with the provisions hereof. During the Declarant Control Period, all Tract Declarations shall require approval of Declarant. Thereafter, a Tract Declaration, if not already in existence, shall require approval by the Board. As more specifically provided herein, any concept plans, master plans or depictions or renderings of the Covered Property, whether maintained in Declarant's offices or in the offices of the Association, shall be subject to change from time to time at Declarant's sole and absolute discretion. For purposes of determining voting rights and Assessments, however, each Lot or Block within the Covered Property without a Tract Declaration shall, unless and until modified, amended or changed by Declarant, be deemed to have a Land Use Classification similar to that shown in Declarant's most recent concept plans, master plans, depictions or renderings. Once a Tract Declaration is recorded, that Tract Declaration, unless and until modified, amended or changed, shall establish the Land Use Classification for the Lot or Block in question.

Declarant may require imposition of special conditions in a Tract Declaration in any case where deemed appropriate in the sole and absolute discretion of Declarant, and may require adequate provision for assessments and maintenance of the property and

improvements and such other provisions as are deemed proper.

ARTICLE 6 COVENANTS AND USE RESTRICTIONS

The following general covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Blocks within all Land Use Classifications, unless otherwise stated.

- 6.1 *Prohibited Uses* Any use of a Lot or Block which is materially offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to health is prohibited unless in writing approved by Declarant or by the Association based upon unique circumstances, limited duration or other justifiable reasons accepted by Declarant in its sole discretion. Further, any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the County of Pima or any other governmental entity having jurisdiction over the Covered Property is prohibited.
- 6.2 *Notes, Specific Plan, Adopted Ordinances, Density Transfers, etc.*
- 6.2.1 Plat Notes. In addition to the restrictions contained herein, the Covered Property shall be subject to all applicable restrictions and limitations set forth on recorded Plats for the Covered Property, or in the Specific Plan or other applicable zoning and ordinances for the Covered Property, including, to the extent applicable and not subsequently amended, Ordinance 1997-69 recorded Docket 10635, Page 1545, Pima County Records. Without limitation, Owners, including all Developer Owners, shall comply with applicable provisions of any recorded Plat, any zoning ordinances including the Specific Plan, and any other ordinances applicable to the Covered Property, including, without limitation, those pertaining to: a) archeological and historic resources, including all provisions of the Archeological Agreement; b) compliance with design and other requirements of the Specific Plan; and c) and the management and maintenance of open space.
- 6.2.2 Density Transfers. All Owners within the Covered Property are advised that the Covered Property and Annexable Property benefits from certain density transfers and rights incident thereto pursuant to ordinances of Pima County allowing for the transfer of density from one parcel of land to another. All Owners are deemed fully informed as to all density transfers inherent in the master plans and other applicable documents, ordinances, or rules

governing, or applicable to, the Covered Property and Annexable Property, or which may be set forth or shown on any Plat, and all Owners are deemed to have consented thereto, and to such transfers of density which may be proposed in the future, whether pursuant to resubdivision Plats or otherwise.

6.2.3 No Representation. Notwithstanding the foregoing, nothing in this Declaration shall in any way be construed as a representation that the Specific Plan or any other zoning, land use or other ordinance, rule or regulation applicable to the Covered Property or any other property will not be amended or modified, it being acknowledged that due to the size and complexity of the plans for the Covered Property and Annexable Property, Declarant reserves the right at any time and for any reason to seek modifications, amendments or revisions to otherwise applicable provisions of the Specific Plan, any other governing ordinance (including any zoning or land use ordinance) or any other rule or regulation applicable to the Covered Property or to the Annexable Property.

6.3 Residential Use Restrictions

All property restricted to Residential Use shall be subject to the further restrictions set forth in Exhibit A hereto and said restrictions may at any time be amended, revised or revoked by Declarant until the latter of the expiration of the Declarant Control Period or such time as Declarant no longer owns any portion of the Covered Property. Thereafter, such restrictions may be amended in accordance with the amendment provisions hereof. Amendment may be accomplished by Declarant's recordation of an instrument reciting the amendment and making reference to this Declaration.

6.4 Single Family Use

No structure whatsoever, other than one private residence per Lot to be occupied by a Single Family, together with such private garage, guest facilities, recreational and storage facilities approved by the Reviewing Authority in accordance with this Declaration, shall be erected, placed or permitted on any Lot designated in a Tract Declaration or by the provisions hereof as having a Single Family Detached Use or Cluster Use.

6.5 No Mobile Homes, etc.

No mobile, manufactured or prefabricated home shall be permitted within the Covered Property.

6.6 Parks, Recreational Areas and Trails

6.6.1 Parks and Trails. A trail system which may include pedestrian, bicycle, and equestrian access, shall exist throughout the Covered Property. Such trail system shall be designed in a manner determined by Declarant in its sole discretion, in coordination with the County and in compliance with governing ordinances and agreements between Pima County and Declarant.

Declarant reserves the right to establish trails across the Covered Property, and within each Block, and an easement in such locations as shall be determined by Declarant is hereby, and shall be, reserved for such purposes on each Plat of any portion of the Covered Property unless in writing waived by Declarant.

6.6.2 Association Parks and Trails. Several park areas are presently planned within the Covered Property. Certain of the parks, as well as trail areas, may at the discretion of the Association, or by dedication or grant, be open for limited use by the general public, subject to reasonable rules and regulations adopted by the Association. Park areas and trail areas within Common Area, if any, allowed by the Association for public use, or upon which certain public rights or easements may exist, shall nevertheless be maintained in the same manner as for all other Common Area. Without limitation, maintenance, repair and replacement of parks and trails within Common Area, or any facilities therein or thereon, and the cost of insurance with respect thereto, shall be the responsibility of the Association. The estimated cost of all such matters shall be included in the Association's annual budget.

Each Owner and Member of the Association is deemed to acknowledge that control over the use of private park and recreational areas, including any trails or trail areas, within Common Area is subject to practical limitations, and that, depending upon features, location and other factors, members of the public may frequent such parks and recreational areas and make use of recreational or other park or trail facilities, whether or not accompanied by Members of the Association, and whether or not with the consent or approval of the Association. Such use may entail traffic and noise, and certain disturbance of adjacent properties, all of which shall be deemed normal and expected, and as would be the case with any other similarly situated park, trail or recreational areas. While the Association is able to take reasonable steps and measures to limit use of park, trail and recreational areas by persons who are not Members of the Association, certain measures may not be practical or cost productive, and the Board shall be the sole judge of what steps or measures, if any, can or should be taken to control use of park areas, trails or trail areas, and recreational areas within Common Area. Despite any actual use by members of the public of park areas, trails or trail areas, or recreational areas within Common Area, the Association shall at all time remain solely responsible for the cost and expense of maintenance of such areas.

Furthermore, each Owner is deemed to acknowledge that certain

agreements and understandings with Pima County, including as may be set forth or referred to in the Specific Plan or elsewhere, shall be binding upon the Association and upon each Owner, and that trails and trailheads, and parking areas for trailheads, may be open to the public to allow access to public lands or other important community lands, open spaces and preserves, and that the Association may be required at its sole cost and expense to maintain such areas for the benefit not only of the Members of the Association, but for the benefit of the public. Except for those private trails and other private areas which Pima County may agree to maintain for the public, the cost of maintenance and repair of such areas shall be borne by the Association, and even with respect to public trails, trailheads or other trail areas, should the Members or the Association desire to improve the standard or level of care and maintenance above that offered by Pima County, the Members and the Association shall be responsible for the greater incremental cost thereof.

Without limitation upon the foregoing, it shall be deemed acknowledged and agreed by all Owners and Members that a portion of certain land shown as "Unit 1" on the Plat for Rocking K South Neighborhood 1, Parcel D, as described in the Recitals to this Declaration, may be developed and used as a park area, or for open space, recreation and other uses, and such portions of Unit 1 may be owned by the Association as Common Area. Further, other portions of Unit 1 may be developed and used for any purpose permitted by applicable zoning, including, without limitation, for Residential or Non-Residential development. Declarant reserves and shall have the right to designate and determine the use or uses of all or any part of said Unit 1, and nothing in this Declaration shall be construed to limit the use of Unit 1, or any part thereof, to any particular use.

6.7 *The Rincon Institute*

The Association does hereby assume all obligations and responsibilities, if any, of the Declarant and any Declarant Affiliate, or other person or entity connected with the development of the Covered Property, for compliance with all terms and provisions of the Specific Plan (or applicable ordinances of Pima County) relating specifically to The Rincon Institute's functions with respect to the Covered Property. Such assumption shall not deprive Declarant of any rights or privileges of Declarant or any Declarant Affiliate with respect to The Rincon Institute, including its right to maintain a representative on the board of directors of The Rincon Institute, nor shall such assumption relieve The Rincon Institute of any of its obligations, or expand its role or functions, but, instead, is intended solely to absolve Declarant and any Declarant Affiliate of any of their direct and affirmative

obligations, including any financial or monetary obligation.

6.8 The Corps
Covenant; Corps
Restricted Property

6.8.1 Covenant Concerning Corps Permit. Declarant shall have the right, at Declarant's sole option, to convey Natural Open Space to the Association as Common Area or area by other denomination. Declarant does hereby assign the Corps Covenant to the Association together with all duties and responsibilities thereunder. The Association shall be deemed to have assumed and agreed to be bound by all duties and obligations under the Corps Covenant, including all duties of Declarant and its beneficiary, including Rocking K Development Company, including all duties of monitoring and preserving Natural Open Space and collecting adequate Assessments and fees to fund said preservation activities, regardless of whether only a portion of the Corps Restricted Property is within the Covered Property. It is understood that while development of Rocking K may be phased over time, and while portions of the Corps Restricted Property may be made Common Area or Natural Open Space, Declarant shall have the right to require that the Association extend its efforts to manage and control all Corp Restricted Property in accordance with the Association's obligations hereunder. Among other things, the Association shall perform an internal review each year of the status of the land governed by the Corps Covenant, being the Corps Restricted Property, and, in particular, the Association's full compliance with the terms of the Corps Covenant. Declarant reserves the right, however, to determine that certain or all of the duties and obligations under the Corps Covenant shall later be conveyed to or assigned to an appropriate conservation organization or other nonprofit entity for the purpose of conservation and preservation of the Natural Open Space, including any Corps Restricted Property, and in furtherance thereof Declarant may cause the Association to contract with any such conservation organization or nonprofit entity. In either case, each Owner, through Assessments of general application, shall be responsible for its ratable payment of all costs and expenses related to the Corps Covenant and that portion of the Natural Open Space comprising Corps Restricted Property, including such costs and expenses which may be payable by reason of any agreement entered into between the Association and any such other conservation organization or nonprofit entity.

6.8.2 Prohibited Uses within Corps Restricted Property. All restrictions and prohibitions of the Corps Covenant applicable to the Corps Restricted Property are, as to such property, incorporated herein, as if fully set forth. In furtherance thereof, any activity on or use of the Corps Restricted Property which is inconsistent with the

terms of the Corps Covenant or the Corps Permit is prohibited.

6.9 *Rights of the Corps*

To accomplish the purposes of the Corps Covenant, the Corps shall have all of those certain rights set forth in the Corps Covenant.

6.10 *Annual Inspections/Corps Covenant*

In accordance with the Corps Covenant, the Association or its approved assignee shall perform an internal review each year of the status of the land subject to the Corps Covenant. Without limitation, an annual inspection of the Corps Restricted Property shall be performed and an inspection report detailing the condition of the Corps Restricted Property and the monitoring and maintenance activities during the previous year shall be prepared, which report shall be made available to the Corps upon request.

The Association shall also establish a separate reserve fund to assure compliance with the terms of the Corps Covenant, all as more specifically set forth in Section 9.9 below.

The protections of Sections 6.8, 6.9, and this Section 6.10, to the extent required by the Corps Covenant, shall not be amended without the approval of the Corps, except that Declarant may amend such provisions if merely to correct errors, eliminate ambiguities, conform to other property amendments, or to set forth terms approved by the Corps. Except as provided, amendment of such provisions shall require the approval of the Corps and the Declarant during the Declarant Control Period, and the Corps and the Association thereafter.

6.11 *Cultural Resources*

The Association shall assure continued compliance with all zoning regulations, including, to the extent applicable, those of the Specific Plan, governing preservation of specifically identified cultural resources for those portions of the Covered Property within Common Area or other areas of Association responsibility.

6.12 *Further Resubdivision*

The following restrictions shall apply to further subdivision or proposed rezoning of all or any portion of the Covered Property:

- (a) So long as the Declarant Control Period shall exist, all subdivision Plats and Tract Declarations, including any Additional Covenants, must be submitted to and approved by Declarant before being recorded or approved by the County, as applicable. Except for property owned by the Declarant, after a subdivision Plat has been approved, no Lot or Block, or any portion of a Lot or Block, shall be further subdivided and no portion less than all of the Lot or Block shall be conveyed or transferred by any Owner without the prior written approval of the Declarant. The combining of a Lot or Common Area with an adjacent Lot or Common Area, where no additional Lot is created, and which is approved by the Reviewing Authority shall not be deemed a resubdivision in accordance with the foregoing requirements.
- (b) No proposed application for rezoning, variance or use permit for any portion of the Covered Property shall be made, filed, submitted to, or recorded with County or any other governmental authority or agency unless it has first been approved by Declarant so long as the Declarant Control Period exists.
- (c) Neither subsection (a) nor (b) shall apply to portions of the Covered Property owned by Declarant or to subdivision Plats, Tract Declarations, or Additional Covenants submitted or proposed by Declarant and pertaining to portions of the Covered Property owned by Declarant. Further, Declarant reserves the absolute right, without any other consent or approval, to resubdivide and change the use of any portion of the Covered Property, other than the Corps Restricted Property, including any Common Area, Lots or Blocks, and may cause the Board or the Association to execute such instruments as may be necessary to accomplish same.
- (d) Declarant may at any time in writing relinquish all or a portion of its approval rights under this Section. After the Declarant Control Period, the Board shall succeed to the right to approve of subdivision Plats, Tract Declarations or Additional Covenants, unless Declarant has assigned such right to one or more

Developer Owners, in which case the Board shall succeed to such rights only after such Developer Owners no longer own any portion of the Covered Property or Annexable Property shown on any of the Plats.

- (e) Notwithstanding the foregoing, the Corps Restricted Property may not be subdivided in a manner that would cause a violation of the Corps Covenant.

6.13 Permissible Encroachments

Each Owner hereby acknowledges and agrees that Dwelling Units, buildings or privately owned patio walls, Improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by Declarant or a Developer Owner may from time to time encroach in minor degree upon the Common Area or other Lots or Blocks in the Covered Property. Such encroachments caused incidentally and which are minor in scope and degree, such as those caused by good faith survey error, and where removal of Improvements would cause gross economic waste, shall be deemed acceptable. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments is conveyed to the Owner of the Lot or Block upon which the majority of the encroaching structure is built.

6.14 Site Coverage

The percentage of each Lot or Block which may be covered by buildings (as well as the location of such buildings and other Improvements on each Lot or Block) shall be subject to the review and approval of the Reviewing Authority (or the duly constituted review committee of any Subsidiary Association established pursuant to the provisions hereof), as part of the Reviewing Authority's review of plans for proposed Improvements on such Lot or Block pursuant to this Declaration, but shall in no event violate the provisions of the Specific Plan or other applicable zoning, ordinances and regulations in effect from time to time. This Section shall not permit restrictions which impede the use and enjoyment of a Lot or Block in accordance with the provisions of the Specific Plan or other applicable zoning ordinances, nor shall it apply to Declarant's Lots or Blocks, nor to Lots or Blocks owned by a Developer Owner whose plans and specifications have been approved by the Reviewing Authority.

6.15 Non-Residential Use

Non-Residential Use of the Covered Property shall not be permitted, except in the case of a use within a Block approved in writing by Declarant, permitted by the Specific Plan or other applicable zoning ordinances, and set forth in a Tract Declaration approved by Declarant during the Declarant Control Period or thereafter by the Board. Nothing herein shall empower the Declarant or the Board to disallow a Non-Residential Use of any Block after the use has first commenced pursuant to an approval properly given.

6.16 Declarant's Exemption and Rights of Developer Owners

6.16.1 Declarant's Exemption. Administrative Offices. Etc. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant or a Declarant Affiliate or their agents during the period of development and construction on the Covered Property of Improvements, landscaping, signs, including marketing signs, model homes, administrative offices, parking areas and other Improvements deemed necessary or convenient by Declarant or a Declarant Affiliate, in its sole discretion, to the development or sale of property within the Covered Property and which activity is not in violation of any permit, approval or rule of any agency or governing authority. Declarant may assign, in whole or in part, its rights and privileges under this Section, and Declarant may grant, in its sole discretion, any similar rights and privileges to any Developer Owner improving, developing or marketing the Covered Property.

6.16.2 Model Homes. Sales Offices. Etc. Notwithstanding any other provision of this Declaration to the contrary, Declarant and any Developer Owner shall have the right to maintain model homes and sales offices on Lots owned or leased by Declarant or by such Developer Owner and to construct and maintain parking areas for the purpose of accommodating persons visiting such model homes and sales offices provided: (a) the plans and specifications for the model homes and sales offices, and related landscaping, have been approved in writing by Declarant or by the Reviewing Authority; (b) the location and design of the parking areas incidental to such model homes and sales offices has been approved in writing by the Declarant or by the Reviewing Authority; (c) the opening and closing hours for such model homes and sales offices have been approved in writing by the Declarant or by the Reviewing Authority; and (d) the construction, operation and maintenance of such model homes and sales offices otherwise complies with all provisions of this Declaration. Any home constructed as a model home shall cease to be used as a model home and any sales office shall cease to be used as a sales office at any time Declarant or the Developer Owner is not actually engaged in the sale of Lots.

Without limitation, Declarant and any Developer Owner may store supplies of brick, block, lumber and other building materials on a Lot owned or leased by Declarant or by a Developer Owner during the course of construction of Improvements on Lots, provided Declarant or the Reviewing Authority may require the screening of such storage areas. In addition, normal construction activities of Declarant or of the Developer Owner in connection with the construction of Improvements shall not be considered a nuisance or otherwise prohibited by this Declaration. A Developer Owner constructing Improvements on Lots shall keep the Lots in a clean, safe and neat condition free of weeds, trash and debris.

6.17 Savings Clause

The provisions of this Declaration shall be construed to be consistent with law, and should any provision violate law, then applicable law shall govern. Without limitation, no provision hereof, nor of Exhibit A hereto, shall be construed to prohibit the placement of solar heating or other such devices or antennae on Lots, provided such placement conforms to such lawful requirements hereof or of the ARC Guidelines which do not conflict with law, nor shall such provisions prohibit the placement of the American Flag, or other flags expressly protected by state law, or the parking of public service vehicles as permitted by law, subject to the ARC Guidelines and rules and regulations of the Association not in conflict with such laws. No provision of this Article shall permit use of the Corp Restricted Property in any manner that would violate the Corps Covenant.

ARTICLE 7

ORGANIZATION OF ASSOCIATION

7.1 General Purpose

The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

7.2 Board of Directors and Officers

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During the Declarant Control Period, the Board shall consist of at least three (3) directors who shall be Members or individuals designated by a corporate, partnership or other non-individual Member, and all directors shall be appointed by the Declarant during the Declarant Control Period, unless Declarant should decide earlier to waive or relinquish its exclusive rights of appointment. Commencing with the first annual meeting at least six (6) months after expiration of the Declarant Control Period, the Board shall consist of, and the

voting Members shall elect, not more than seven (7) directors, but never an even number, all of whom must be Members, or an individual designated by a corporate, partnership or other non-individual Member.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee and a covenant enforcement committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by the Class B Members to the Class A Members.

7.3 Association Rules

By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Areas and other matters within the responsibility of the Association, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property, the Common Areas and the Limited Common Areas. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association.

7.4 Personal Liability

No Reviewing Authority, Board member, officer, committee member, employee or representative of the Association, or the Association, itself, shall be personally liable to any Owner, or to any other Person, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith and who has engaged in willful or intentional misconduct.

7.5 Subsidiary Associations and Related Matters

In the event any homeowners or similar Subsidiary Association is formed by a Developer Owner of a Block or portion thereof, or group of Lots, such Subsidiary Association's governing documents shall not be effective unless they have been approved in advance by Declarant during the Declarant Control Period, or, thereafter, by the Board and they specify that such governing documents, such Block or portion thereof, or group of Lots, the Subsidiary Association, and the Subsidiary Association's members are subject and subordinate to this Declaration, the ARC Guidelines, the Articles, the Bylaws and the Association Rules.

Subsidiary Associations, if any, shall have the right to own, operate and maintain Limited Common Areas. The Board may delegate to a Subsidiary Association the responsibility and duty of billing and collecting for some or all of the Assessments.

Any Developer Owner proposing age restricted communities shall be solely responsible for compliance with all federal and state law applicable to any such offering, and shall prepare and submit to Declarant for its approval all Tract Declarations and Additional Covenants setting forth the plan for such developments, and shall provide for a Subsidiary Association solely responsible for monitoring and enforcing the terms of all such Tract Declarations and Additional Covenants.

7.6 Mergers or Consolidations

The Association shall have the right, power and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association.

7.7 Contracts with Others

Adjacent to or in the vicinity of the Covered Property are properties which have been, or in the future may be, developed independently. Declarant or the Association may enter into a covenant to share costs with all or any of the owners of such adjacent or nearby areas which covenant allocates or specifies rights of access, use of Common Area, maintenance responsibilities, expenses, and other matters between the Association and such property owners. Unless annexed in accordance with the provisions hereof, the owners of adjacent or nearby properties shall not be entitled to vote on Association matters, shall not be Members of the Association, and shall not be subject to Assessments or other conditions or restrictions set forth in this Declaration.

ARTICLE 8
MEMBERSHIPS AND VOTING

8.1 *Votes of Owners of Lots and Blocks*

Every Owner of a Lot or Block, including Declarant, shall automatically be a Member of the Association, and such Membership shall remain for so long as such Owner owns any Lot or Block. Declarant shall also automatically be a Member of the Association, and such Membership shall remain so long as the Declarant Control Period exists. All Owners other than Declarant, shall be Class A Members. Declarant shall be a Class B Member during the Declarant Control Period, but should the Declarant Control Period expire, or should Declarant in writing waive or relinquish its Class B Membership while Declarant still owns any Lot or Block, Declarant shall be a Class A Member with respect to the Lots or Blocks owned by Declarant.

Each Class A Member shall have the following number of votes and Memberships:

8.1.1 Lots. In the case of Lots, one (1) vote and one (1) Membership for each Lot owned.

8.1.2 Single Family Detached Blocks. In the case of a Block designated by Tract Declaration, or in the absence of a Tract Declaration, otherwise by Declarant, as a Single Family Detached Use Block which has not been divided into Lots by a subdivision Plat or other recorded instrument, two (2) votes and two (2) Memberships for each Gross Acre owned within such Block.

8.1.3 Condominium Blocks. In the case of a Block designated by Tract Declaration, or in the absence of a Tract Declaration, otherwise by Declarant, as a Condominium Use Block, and for which a condominium declaration and Condominium Plat has not been recorded, five (5) votes and five (5) Memberships for each Gross Acre owned within such Block.

8.1.4 Apartment Blocks. In the case of an Apartment Use Block designated by Tract Declaration, or in the absence of a Tract Declaration, otherwise by Declarant, ten (10) votes and ten (10) Memberships for each Gross Acre owned within such Block.

8.1.5 Non-Residential Blocks In the case of a Non-Residential Use Block designated by Tract Declaration, or in the absence of a Tract Declaration, otherwise by Declarant, five (5) votes and five (5) Memberships for each Gross Acre owned within such Block.

8.2 *Votes of Declarant and Class B Member*

In recognition of the benefit of consistency in direction and control over Rocking K, the votes of the Declarant and Class B Member, and for none other, shall be based upon ownership of: a) Lots or of Blocks within any portion of the Covered Property, including within any of the land shown on the Plats identified in Recital A, and including any other land annexed under the purview hereof as Covered Property; and b) Lots and Blocks shown anywhere on the Block Plat, including any resubdivision plat thereof, whether or not such Lots or Blocks have been annexed within the Covered Property, so long as such Lots or Block not within the Covered Property are owned by Declarant or any Declarant Affiliate or so long as Declarant has the right, by real estate contract, option agreement or otherwise, to acquire title to such Lots or Blocks. For each Lot or Block, or portion thereof, owned by Declarant or the Class B Member, whether or not within the Covered Property, but shown on any Plat (including the Block Plat) or lying within other land which has been annexed under the purview hereof, Declarant or the Class B Member shall have three (3) times the number of votes that a Class A Member would have for such Lots or Blocks (assuming all were a part of the Covered Property).

8.3 *Computation of Votes for Lots*

Once a subdivision Plat, condominium declaration or other instrument creating Lots for a Block is recorded, the number of votes previously applicable to the Block shall be adjusted to reflect the actual number of Lots as set forth in the recorded subdivision Plat, condominium declaration or other instrument creating Lots. All votes attributed to an unsubdivided Block as a "Block" shall cease and be made applicable to Lots when all of the area is platted or otherwise divided into Lots. Votes based upon Gross Acres shall be rounded to the nearest whole vote. As provided elsewhere herein, this Declaration applies solely to the Covered Property, and Lots or Blocks outside the Covered Property are relevant only in the computation of the votes of Declarant and Class B Member.

8.4 *Membership Appurtenant to Ownership*

Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Block to which the Membership is attributable, except that regardless of ownership of any Lot or Block Declarant shall be a member so long the Declarant Control Period shall exist. Joint ownership or ownership of undivided interests in any property as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot or Block.

8.5 *Conversion of Class B Membership* The Class B Membership shall terminate and be converted to Class A Membership upon the happening of the first of the following events:

- (a) Termination of the Declarant Control Period; or
- (b) the date on which the Class B Member relinquishes its Class B Membership by notifying the Class A Members in writing.

Declarant shall have the right to assign its rights and privileges as the Declarant and as the Class B Member in whole or in part. Such assignment may include all special voting and other provisions set forth herein.

Upon conversion of the Class B Membership to Class A Membership, Declarant and any other Class B Member shall be entitled to Class A votes for all Lots and Blocks which they may own.

8.6 *Right to Vote* No change in the ownership of a Lot or Block shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. The vote for each Member must be cast as a single unit. Fractional votes shall not be allowed. In the event that a Lot or Block is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot or Block, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot or Block unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one Person casts or attempts to cast a vote for a particular Lot or Block all such votes shall be deemed void.

8.7 *Member's Rights* Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the ARC Guidelines.

8.8 *Control by Declarant and Rights of the Class B Member* Declarant has the right to control the Association. Such control shall exist by virtue of the right, at all times during the Declarant Control Period, to appoint all Directors of the Association, as well as their replacements in the event of death, removal, resignation or otherwise. Additionally, the terms of this Declaration provide for extensive rights and control by the Declarant to amend this Declaration, and Declarant may further amend the Articles and

Bylaws of the Association, may appoint the ARC, and may veto amendments proposed to be made by the Class A Members. The Declarant shall have such additional and other rights and powers as are set forth herein or in other Governing Documents, including the right to disapprove of actions of the Board.

8.9 Transfer of Membership

The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Block, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a non-approved form of transfer shall be void. Any transfer of ownership in a Lot or Block shall operate to transfer the Membership appurtenant to ownership to the new Owner.

**ARTICLE 9
ASSESSMENTS AND CREATION OF LIEN**

9.1 Creation of Assessment Lien; Personal Obligation of Lot or Block Owner

Each Owner, other than Declarant, by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument) is deemed to covenant and agree, to pay to the Association the Assessments when due in relation to land within the Covered Property. The amount and time for payment of Assessments shall be determined by the Board pursuant to this Declaration. In determining the amount of the Assessments, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate. All Assessments, together with interest thereon and the costs and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Block against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Block at the time when such Assessments become due and payable. No Owner may waive or otherwise escape liability for Assessments provided for herein by nonuse of the Common Areas or other portion of the Covered Property or by abandonment of any Lot.

9.2 Annual Assessments

The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth hereinbelow. The Annual Assessments levied by the Association shall be used to promote the recreation, health and welfare of the

Owners and Occupants, to enhance the quality of life within the Covered Property, to preserve and enhance the value of the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Areas, to establish reasonable reserves, for payment of expenses incurred or to be incurred in relation to the obligations of the Association under Corps Covenant, all of which have been assumed by the Association, and to otherwise further the interests of the Association as the Board deems appropriate. Without limitation, funds collected by the Association shall also be used to maintain land for which the Association is responsible for maintenance, including public and private parks, and public and private trails, as more specifically set forth herein. Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the provisions hereof.

9.3 *Rate of Assessment*

The amount of the Annual Assessments, Area Assessments, Maintenance Assessments and Special Assessments shall be established by the Board, in its sole discretion.

In establishing its budget and creating its plan for Assessments each year, the Board shall first establish an Annual Assessment per Lot payable for each Lot within the Covered Property (the "**Base Assessment**"). In the case of a Single Family Detached Use Block or Cluster Use Block that has not been subdivided into Lots, the Annual Assessment shall be two (2) times the Base Assessment for each Gross Acre in the Block.

In the case of a Non-Residential Use Block, or a Condominium Use Block for which a condominium declaration and Condominium Plat has not been recorded, the Annual Assessment shall be five (5) times the Base Assessment for each Gross Acre in the Block.

In the case of an Apartment Use Block, the Annual Assessment shall be ten (10) times the Base Assessment for each Gross Acre in the Block.

The Base Assessment shall take into account all Common Expenses, and all required or reasonably necessary reserves, and shall be determined independent from Area Assessments and Maintenance Assessments which are to be allocated to specific or benefited Lots. The determination of Common Expenses, and the task of budgeting therefor, shall be in the sole and absolute

discretion of the Board. Common Expenses shall generally be chargeable, as provided above, by Assessment of all Owners and Members, as opposed to being allocated solely to certain Lots or Blocks as may be the case for Area Assessments and Maintenance Assessments. The task of determining and budgeting for Area Assessments and Maintenance Assessments shall also be left to the sound discretion of the Board.

9.4 **Obligation of
Developer Owner**

The first Developer Owner of a Lot or Block who is the direct grantee under a conveyance from Declarant shall be entitled to pay only twenty-five percent (25%) of the otherwise applicable Annual or Special Assessment for each such Lot or Block owned until the date which is twelve (12) months following such conveyance to such initial Developer Owner (the “**Initial Reduction Period**”).

After expiration of the Initial Reduction Period, a Developer Owner of a Lot or Block is entitled to pay only fifty percent (50%) of the otherwise applicable Annual or Special Assessment for each such Lot or Block owned until the earlier of:

i) the initial conveyance of a Lot with a completed Dwelling Unit thereon to the first Non-Developer Owner thereof (including a dwelling in a Single Family Detached Use or Cluster Use project), or, in the case of an Apartment Block, the date of completion of construction of Apartments thereon, or completion of construction of a Condominium building thereon in the case of a Condominium Use Block, or in the case of a Non-Residential Use Block, the date of completion of construction of a Non-Residential Building thereon; or

ii) two (2) years after the date of the initial conveyance of the Lot or Block from Declarant to the initial Developer Owner thereof.

For clarification only, the reduced assessment rates above only apply to Annual Assessments and Special Assessments, not to Area Assessments or Maintenance Assessments to the extent such Assessments may be in effect. Further, any interim or periodic payments due for a portion of the period for which Assessments are charged, shall be prorated.

Completion of construction, in the case of a Block designated for Apartment Use, Condominium Use, or Non-Residential Use, shall be the date of substantial completion of construction of improvements on the Block as determined by the Board in its reasonable discretion, and may have reference to the

date of issuance of a certificate of occupancy.

In the case of a site plan approved by the Reviewing Authority for a Block on which it is determined that more than one building will be constructed, the Block will, for the purposes of this Article only, be deemed subdivided into the number of sub-blocks equal to the number of approved buildings set forth on the approved site plan, with Assessments applicable to each Block or portion thereof, as applicable.

If a Developer Owner ceases to qualify for the applicable reduced rate set forth above during any Assessment Period, such Developer Owner shall immediately notify the Board, in writing, of its change in status. If an Owner of a Lot or Block having the right to pay the reduced rate fails to notify the Board of the date the payment amount is to be increased, that Owner will still be liable for the full amount of the Assessment as of the date it was required to pay that full or greater amount of the Assessment and such Owner's failure to notify the Board will not relieve the Owner of liability for the full amount of the Assessment.

The Board, at any time, has the right to request that any Developer Owner being assessed at a reduced rate furnish the Association with evidence that such Developer Owner continues to be entitled to the applicable reduced rate under this Section. If such Developer Owner fails to produce the requested evidence within thirty (30) days of the date of the Board's request, or if the evidence which is furnished is unsatisfactory in the Board's reasonable discretion, to demonstrate that Developer Owner's continued entitlement to the reduced rate, the Board may terminate the reduced rate as of the date reasonably deemed appropriate by the Board.

9.5 Special Assessments In addition to the Annual Assessments, the Board may levy a Special Assessment for: (a) the purpose of constructing improvements to Common Area; (b) correcting an inadequacy in the Association's accounts; (c) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owed by the Association; or (d) defraying such other expenses as the Board may deem appropriate. The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments made after expiration of the Declarant Control Period require approval by the Board, and by a majority of the votes of the Class A Members present at a meeting at which a quorum is present.

9.6 Area Assessments Where the Association has undertaken by virtue of its obligations hereunder the responsibility to maintain or repair the exteriors or roofs of Dwelling Units, or to maintain, repair, replace, repave, resurface or operate private streets or private roadways or any open space, equestrian and pedestrian trails, shared mailboxes, recreational or other common facilities, including swimming pools or water features, any guard gates or other privacy or security gates or facilities, or any Limited Common Area (which obligations may include exterior maintenance obligations under Section 11.2, or obligations pursuant to a Tract Declaration or pursuant to any special contract or agreement, including any bulk service contract as described in Section 12.5), the Board may, in its discretion, assess all (or an appropriate portion) of the cost of all such items solely against the Lots or Blocks within such subdivision or area within the Covered Property (and the respective Owners thereof) as an Area Assessment. An Area Assessment shall be assessed uniformly against each of the Lots or Blocks within such subdivision or area. Such additional Area Assessment may also include amounts to establish and fund reserves as the Board may deem reasonable and appropriate. An Area Assessment pursuant to this Section shall be secured by the Assessment Lien on each Owner's Lot or Block affected, and shall be due and payable by such Owners to the Association fifteen (15) days after such dates or times as are determined by the Board.

9.7 Working Capital Fund To help assure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, each purchaser of a Lot upon which the construction of improvements is complete, as evidenced by a certificate of occupancy or similar instrument which allows improvements upon the Lot to be used as a residence, shall pay to the Association immediately upon becoming the Owner of a Lot a

sum equal to twenty-five percent (25%) of the then-current Annual Assessment applicable to such Lot (the "**Working Capital Fund Contribution**"). A Working Capital Fund Contribution shall continue to be payable upon each subsequent sale of a Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration and the Articles and Bylaws. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration. Working Capital Fund Contributions shall not be due upon sale or transfer of property used for Apartment Use. Working Capital Fund Contributions are not payable in connection with conveyances to: (i) purchasers in bulk of four (4) or more Lots improved with Dwelling Units in a simultaneous acquisition and closing, which purchasers are purchasing for investment and resale; (ii) Developer Owners; (iii) the same joint owners or co-owners, or by and among them (or their trusts or controlled entities such as limited liability companies they own and control) pursuant to tax planning, estate planning, or merely to change ownership for convenience, liability avoidance or similar transactions where a bona fide sale to a third person is not involved; (iv) a trustee of which the conveying Owner is the sole beneficiary, or an Owner's estate, surviving spouse or child upon the death of the prior Owner; (v) an entity wholly owned by the conveying Owner, provided, upon any subsequent transfer of an ownership interest in such entity, the Working Capital Fund Contributions shall become due; or (vi) an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage. Said exceptions (i) through (vi) shall be referred to Payment Transfer Exceptions. None of the Payment Transfer Exceptions shall purport to exempt a subsequent transfer or conveyance which does not meet the criteria of the Payment Transfer Exceptions.

9.8 *Reserves Fund*

To help assure that the Association shall have adequate reserves, each purchaser of a Lot upon which the construction of Improvements is complete, as evidenced by a certificate of occupancy or similar instrument, shall also pay to the Association immediately upon becoming the Owner of a Lot a sum equal to twenty-five percent (25%) of the then-current Annual Assessment applicable to such Lot (the "**General Reserve Fund Contribution**") to establish a reserve fund to meet unforeseen expenditures, to purchase any additional equipment or services by or for the Association, or, on a temporary basis, to pay Association expenses as they come due in the ordinary course if there are not sufficient funds in the Association's general accounts

at the time of the due date to pay such expenses. A General Reserve Fund Contribution shall continue to be payable upon each subsequent sale of a Lot. Payments made pursuant to this Section shall be nonrefundable and shall not be considered an advance payment of any Assessments levied by the Association pursuant to this Declaration. General Reserve Fund Contributions are not payable by purchasers in bulk of four (4) or more Lots improved with Dwelling Units in a simultaneous acquisition and closing and who are purchasing for investment and resale, nor shall General Reserve Fund Contributions be due upon conveyance of a Lot under any circumstance whereby that same conveyance was exempt from payment of a Working Capital Fund Contribution due to such conveyance qualifying as a Payment Transfer Exception pursuant to Section 9.7 above.

9.9 Special Reserve Funds

Two other separate special reserve funds shall be established by the Association, as follows: (i) a reserve fund to pay ongoing, periodic costs and expenses of the Association in monitoring, complying with, or otherwise addressing issues under the Corps Permit, including payment of all anticipated maintenance of repair costs, and all extraordinary repair and maintenance costs, the responsibility with respect to which the Association is deemed to have assumed; and (ii) a reserve fund to pay costs and expenses, if any, of the Association in complying with all requirements hereof, or of the Specific Plan or other applicable zoning ordinances, pertaining to coordination and cooperation with The Rincon Institute. In addition to the foregoing, with respect solely to the Corps Restricted Property, the Association shall every two years reevaluate the amount of the reserve in item (i) above and shall at all times maintain a minimum balance of \$5,000.00 in the fund, subject to automatic increases of 2% at two-year intervals unless the Corps shall have agreed to a smaller increase. The assumption by the Association of all such matters requires no further confirmation, the recording of this Declaration being sufficient in and of itself.

9.10 Maintenance Assessments

In addition to any Annual Assessment or Special Assessment, the Board has the authority to levy and collect Maintenance Assessments for costs and expenses arising out of any special characteristics or needs of a particular Lot or Block, or if the Owner of a Lot or Block contracts with the Association for the Association to provide particular maintenance services to such Owner's Lot or Block. Furthermore, if any Common Expense (or other cost or expense to the Association) is caused by the misconduct of an Owner of a Lot or Block, including its Occupants or other tenants, guests, invitees or licensees, including any misconduct leading to the imposition of any fine or penalty

against such Owner, or expense by the Association to bring such Owner into compliance with the provisions hereof, the Association may assess that expense exclusively against that Owner and such Owner's Lot or Block, but in such events only after notice and an opportunity for a hearing, including as required by law. Maintenance Assessments may be enforced in the same manner as Annual Assessments.

9.11 Fines and Penalties

If any Owner, his or her family, or any licensee, invitee, tenant or lessee violates the Governing Documents, the Board after providing the Owner with notice of the violation and an opportunity for a hearing, may levy a fine upon the Owner and may suspend the violator's right to use the Common Area. The Board may impose a fine for each day a violation continues after the Board has provided the Owner with written notice of the violation. The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within fifteen (15) days of notice of the due date may be collected in a manner provided for by law. This Section shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

9.12 Annual Assessment Period

Except as otherwise provided herein below, the Assessment Period shall be the calendar year, and Annual Assessments are due and payable in advance on the first day of each fiscal year (or, at the option of the Board, on a quarterly or other basis). The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence upon conveyance of the first Lot or Block from Declarant to a Developer Owner, unless otherwise determined by Declarant, and shall terminate on December 31 of the same year. The Annual Assessments shall be prorated for the initial Assessment Period. Area Assessments and Maintenance Assessments shall commence when determined by the Association in relation to special facilities or services giving rise to the need for such Assessments.

If any installment permitted for the payment of Assessments is not paid when due, the Board may accelerate the entire Annual Assessment or other Assessment. Late fees and interest may be added to the delinquent amount of any Assessment and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law. Delinquent payments shall, to the extent permitted by law, apply first to delinquent Assessments, including late fees and other sums due, and then to accrued interest and attorneys' fees and other legal costs, including

litigation related expenses and expert witness fees, if any.

9.13 **Billing and
Collection
Procedures**

The Board shall have the right to adopt procedures for the purpose of making, billing and collecting Assessments, which procedures may include delegating to the applicable Subsidiary Association, if any, the authority and obligation of billing and collecting some or all of the Assessments applicable to certain Lots. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment. No Assessment Lien shall be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice thereof prior to the commencement of such foreclosure or enforcement, and until all requirements of law are first met. The notice shall be addressed to the Owner at the address of the Owner on the records of the Association. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Block changes during an Assessment Period. Any successor Owner shall be given credit for any non-refunded prepayments made by a prior Owner. In case the Owner of a Lot or Block having a right to pay a reduced rate as provided herein fails to notify the Board at such time as the payment amount should be increased, such Owner shall nonetheless be liable for the increased amount of the Assessment and such Owner's failure to notify the Board shall not relieve such Owner of the liability for such increased Assessment.

9.14 **Collection Costs and
Interest on
Delinquent
Amounts**

Any Delinquent Amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within fifteen (15) days after notice thereof, addressed to the Owner at the address of the Owner on the records of the Association, is given. In addition, the Delinquent Amount shall bear interest from its due date until paid at a rate equal to twelve percent (12%) per annum. The Owner shall be liable for all costs, including but not limited to attorneys' fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount. The foregoing charges and interest shall not exceed the maximum rate or amount allowable by applicable law, as from time to time established or amended.

9.15 Statement of Payment

Upon receipt of a written request therefor from any Owner or Resident, the Board, within a reasonable time thereafter, shall issue to the requesting party a written statement stating that as of the date of that statement:

9.15.1 all Assessments (including collection fees, if any in regard thereto), have been paid with respect to such Owner's or Occupant's Lot or Block; or,

9.15.2 if such have not been paid, the amount then due and payable.

The Association may make a reasonable charge for the issuance of such statement. Any such statement shall be conclusive and binding with respect to any matter set forth therein.

9.16 Exempt Property

Exempt Property shall be exempt from Assessments and the Assessment Lien, and the Owner thereof shall have no voting rights in the Association, provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Assessments (prorated as of the date it ceased to be Exempt Property) and the Assessment Lien, and the Owner thereof shall have voting rights in the Association as otherwise determined in this Declaration.

9.17 Declarant's Exemption

Anything in this Declaration to the contrary notwithstanding, neither Declarant nor any Declarant Affiliate shall be liable for and shall not be required to pay Assessments upon Lots or Blocks owned by Declarant or such Declarant Affiliate, whether inside or lying outside the boundaries of the Covered Property, except that Declarant shall pay Assessments on Completed Lots owned by Declarant within the Covered Property. For purposes of this Section, "Completed Lots" shall mean any Lot owned by Declarant or a Declarant Affiliate within the Covered Property with a Dwelling Unit ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living in the Covered Property, but shall not include any Lots with improvements thereon used by Declarant as models, administrative offices or sales offices. Nor shall Declarant be liable for the payment of any Assessments for any Lot or Block that, having been previously sold to a purchaser, has been deeded back to the Declarant by foreclosure or deed in lieu of foreclosure, unless such Lot is a Completed Lot. In no case shall Assessments of any nature apply to land outside the Covered Property.

9.18 Payment of Deficiencies

Declarant and each Declarant Affiliate shall pay, for any given Assessment Period in which Declarant and such Declarant Affiliates have paid or contributed to the Association (considering all payments and contributions, including contributions "in kind" of services and money paid to the Association or to suppliers, contractors, subcontractors and others) less than the full Annual Assessment for each Lot or Block owned by them inside the Covered Property, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Area (i.e., only for actual budget deficits), but only in accordance with the terms hereof, and only up to the full Annual Assessment for each such Lot or Block actually owned by Declarant or such Declarant Affiliates in the Covered Property, with due credit for "in-kind" contributions. A shortfall or deficiency shall exist if current ordinary and budgeted expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that Declarant and any such Declarant Affiliates shall not be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year, which decrease was not approved by Declarant, nor for any shortfall or deficiency incurred after expiration of the Declarant Control Period.

Declarant and any Declarant Affiliate may at any time at their sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay instead up to the full Annual Assessment for each Lot or Block within the Covered Property owned by Declarant or by such Declarant Affiliate. Declarant's, and each Declarant Affiliate's obligation to contribute toward a deficiency as provided herein is supported by a lien on Declarant's Lots and Blocks and the Lots and Blocks of each Declarant Affiliate.

9.19 Community Enhancement Fee

9.19.1 The Board shall have the authority, on behalf of the Association, to establish and collect an enhancement fee (hereinafter, "**Community Enhancement Fee**") from the transferring Owner upon each transfer of title to a Lot in the Covered Property used or to be used for residential purposes, which Community Enhancement Fee shall be payable to the Association at the closing of the transfer and shall be secured by the Association's lien for Assessments hereunder. No Community Enhancement Fee shall apply to or be payable on account of any conveyance or transfer of a Block. Each Owner shall notify the Association of a pending title transfer at least fifteen (15) days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and such other information as the

Board may reasonably require.

9.19.2 The Board shall have the sole discretion to determine the amount and method of determining any such Community Enhancement Fee, except that the manner of determining the fee shall be uniform as to all Lots. In no event shall any such Community Enhancement Fee exceed one-quarter of one percent (.25%) of the selling price of the Lot (which includes, if applicable, any Dwelling Unit thereon).

9.19.3 Notwithstanding the above, no Community Enhancement Fee shall be levied upon transfer of title to a Lot:

- (a) by or to Declarant;
- (b) by or to a Developer Owner in the course of or pursuant to development or resale;
- (c) by and among joint owners or co-owners pursuant to tax planning, estate planning, or merely to change ownership for convenience, liability avoidance or similar transactions where a bona fide sale to a third person is not involved;
- (d) to a trustee of which an Owner is the sole beneficiary, or to an Owner's estate, surviving spouse or child upon the death of the Owner;
- (e) to an entity wholly owned by the grantor, provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due; or
- (f) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

9.19.4 All Community Enhancement Fees which the Association collects shall be deposited into a segregated account used for such purposes as the Board deems beneficial to the general good and welfare of the Covered Property, which the Governing Documents do not otherwise require to be addressed by the Association's general operating budget. Without limitation, such fees may be used by the Association for the following purposes:

- (a) preservation and maintenance of natural areas, special preserves, or similar conservation areas, including Natural Undisturbed Open Space areas subject to the Corps Covenant, or otherwise

subject to regulation by the Army Corps of Engineers, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation, and preservation of the natural environment within and adjacent to the Covered Property;

- (b) programs, services, and activities which serve to promote a sense of community and which provide a direct benefit to the Covered Property;
- (c) social services, community outreach programs, and other charitable causes that provide a direct benefit to the Covered Property;
- (d) Association reserve accounts; and operating and maintenance costs

9.20 Savings Clause

Notwithstanding the provisions of this Article, or any other provision of this Declaration, the extent of any lien of the Association shall be subject to such provisions as are established at law or in equity, including such limitations as are established and imposed by A.R.S. § 33-1807.

**ARTICLE 10
ENFORCEMENT AND THE ASSESSMENT LIEN**

10.1 Association Remedies to Enforce Assessments

If any Owner fails to pay any Assessment when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking either or both of the following actions, concurrently or separately (and by exercising either remedy the Association does not prejudice or waive its right to exercise the other remedy):

10.1.1 Bring an action at law against the Owner to recover judgment against the Owner who is personally liable for the Assessments; and,

10.1.2 Foreclose the Assessment Lien against the appropriate Lot or Block in accordance with then prevailing Arizona law, and the Association may bid for and purchase the Lot or Block at any foreclosure sale.

This Section shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

10.2 Subordination of Assessment Lien

The Assessment Lien shall have priority from the date of recording of this Declaration and shall be superior to all charges, liens or encumbrances which hereafter are or may be imposed on any Lot or Block except as provided by law. Without limitation, the Assessment lien is junior to:

10.2.1 the lien of any First Mortgage encumbering the Lots and Blocks; and

10.2.2 the lien for taxes or other governmental assessments which are deemed superior hereto by applicable law.

Sale or transfer of any Lot or Block shall not affect the Assessment Lien provided, however, the sale or transfer of any Lot or Block pursuant to any First Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien only as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Block, or the Owner thereof, for liability from any Assessment theretofore becoming due nor from the Assessment Lien arising in regard thereto. In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a Person obtaining an interest in a Lot or Block through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

**ARTICLE 11
MAINTENANCE BY THE ASSOCIATION**

11.1 Common Area and Public Rights of Way

The Association, or its duly delegated representative, shall maintain and otherwise manage Common Area and pay all ad valorem taxes, and all assessments, fees, and charges of whatever description, levied on or assessed against the Common Area owned in fee by the Association, including with respect to the Corps Restricted Property. Common Area to be maintained by the Association may be identified on recorded Plats approved by Declarant, or in a Tract Declaration, or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto. A Tract Declaration or a separate instrument approved by Declarant may limit the Association's responsibilities with respect to certain Common Area.

The Association may also in its discretion elect to maintain landscaping and other Improvements within public rights of way, including any areas to be maintained pursuant to a license or other agreement with the County or other governmental entity, located

within the Covered Property, including roadways, medians, entryways, public trail areas and similar facilities, to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity with respect to such public rights of way, and may charge any and all costs therefor as a Common Expense or as an Area Assessment as appropriate.

The Association at its discretion, or as set forth in a Tract Declaration approved by Declarant, may also maintain certain landscaping within the front or side yards of certain Dwelling Units. In such case, the Association may require that all exterior landscaping be watered by meters registered to each Owner, with each Owner to pay for all water delivered for landscaping or other work, or may install a separate meter registered to the Association.

Nothing herein shall preclude the Association from electing to cease such landscaping, assuming the Association had first undertaken responsibility therefor, and to require that each Owner accomplish such work and efforts instead, provided such decision is approved by Declarant and is consistent with the terms of an applicable Tract Declaration, as amended.

Notwithstanding the foregoing, all responsibility for maintenance and repair of any portion of a Dwelling Unit or other Improvement rests solely with the Owner unless specifically set forth in a Tract Declaration, or unless otherwise agreed in writing by the Association.

In addition to the foregoing, the Association shall pay before delinquency any assessments, fees, or charges, including any taxes, imposed upon, or incurred as a result of, the Corps Covenant, and shall furnish the Corps with satisfactory evidence of such payment upon request.

11.2 Dwelling Unit
Exteriors:
Insurance.

If not already maintained by a Subsidiary Association pursuant to a Tract Declaration, the Association in its sole and absolute discretion may, or, if specifically directed by Declarant and provided for in a Tract Declaration approved by Declarant, shall, maintain exterior surfaces and the aesthetic appearance of the exterior walls, and the surface sheeting, membrane and related components of the roofs of certain Dwelling Units, including without limitation "townhouses", "patio homes", "triplexes", "clustered housing", "zero-lot line housing", and similar residential housing arrangements that either contain shared exterior walls and roofs, or which have other features or patterns

of uniformity which in the discretion of Declarant or the Association make it advisable that the Association undertake such work or maintenance and repair.

If so undertaken, the responsibility of the Association shall exclude, and shall be deemed to exclude, all matters of structure, soils conditions, foundations and other such matters, it being understood that the Association's responsibility would be limited to matters of aesthetics and appearance, except for roof maintenance, if so undertaken.

Any such election by the Association to undertake such repair or other work, and any provision therefor in any Tract Declaration, may pertain solely to certain Lots in certain categories or identified product types of Dwelling Units, such as those set forth above, and any such election shall be subject to change by the Board at its sole discretion.

The costs of such exterior maintenance and repair, if undertaken by the Association, shall be charged as an Area Assessment to the affected Lots.

Nothing herein shall preclude the Association, through the Board, from electing to cease such responsibility for repair and maintenance of exteriors, assuming the Association had first undertaken such responsibility, and to require that each Owner accomplish such work and efforts instead, provided such decision is approved by Declarant.

In all cases, other than within Condominium Use projects wherein insurance may be maintained by a condominium association in blanket form, and whether or not the Association has assumed responsibility for certain limited exterior maintenance, each Owner shall be solely responsible for, and shall secure and maintain, all insurance in any way related to each Dwelling Unit, home or other Improvement upon a Lot, and all Owners are solely responsible for insurance on the contents of any Dwelling Unit or other Improvement, including all personal property. Nothing herein shall in any way require that the Association pay for or obtain insurance on the Dwelling Units, Improvements or personal property located upon any Lot or Block, or within any Apartment Unit.

11.3 Standard of Care

The Association shall use a reasonable standard of care in providing for the repair, management and maintenance of the Common Area and other areas for which it is responsible so that the Covered Property will reflect a high degree of pride of

ownership. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Area.

11.4 Maintenance
Equipment and
Storage

The Association may own and operate all equipment and supplies necessary for the maintenance, repair and upkeep of the Common Area and may use portions of the Common Area as a maintenance yard or for storage of such equipment in accordance with the provisions hereof. The Association may further hire any necessary contractors, consultants or other employees necessary to meet its maintenance obligations. The costs and expenses related to such equipment, supplies, contractors and employees shall be charged as a Common Expense or as an Area Assessment as appropriate.

11.5 Roof and Exterior
Maintenance; Yard
Area Maintenance

The Association shall have the right to enter upon the private Lot of each and every Owner to accomplish maintenance, repair or replacement of landscaping or facilities within yard areas, including front yards and side and rear yard areas lying between the Dwelling Unit or private patio walls and the adjacent streets, sidewalks or Common Area, and to accomplish other maintenance, repair or replacement, such as exterior painting or stucco work, roof maintenance for common or shared roofs, or other maintenance, all as further provided in Section 11.2 above, but in any case only if the Association has in writing agreed to perform such maintenance, repair or replacement, or if the Declarant has in a recorded Tract Declaration providing for such maintenance, repair or replacement.

To accomplish such maintenance, repair or replacement, the Association shall have a perpetual easement over and across each Lot, but not within or across any enclosed private patio areas unless necessary to perform the work in question. Such maintenance, repair or replacement, by the Association may include landscaping, trimming or cutting hedges, repair and maintenance of utility or water lines serving more than one Lot, and other or related maintenance or repair work, including certain cosmetic work to the exteriors of Dwelling Units, or maintenance of roof sheeting, membrane or relating work for townhomes or other product with common or shared roofs.

11.6 Standards of Use or
Maintenance

While the Association has broad discretion in its decisions with regard to maintenance and upkeep of Common Area, and with regard to the use of Common Area, the Corps Restricted Property shall be deemed separate in its treatment, care and use, all of which shall be governed by the Corps Covenant. Nothing in this Declaration purporting to mandate that all or certain portions of the Common Area be treated alike, or that such areas are subject

to easements of any nature, defined or undefined, shall apply to the Corps Restricted Property unless in any specific instance the Board expressly determines that such provisions are not in conflict with the Corps Covenant and such provisions, in fact, are not in conflict.

ARTICLE 12 RIGHTS AND POWERS OF ASSOCIATION

- 12.1 **Rights, Powers and Duties of the Association** In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours. This Declaration controls in the event of any conflict.
- 12.2 **Rules and Regulations** In addition to the right to adopt, amend and repeal rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, the Articles, and the Bylaws. Upon adoption, the Association Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.
- 12.3 **Association's Rights of Enforcement** The Association, as the agent and representative of the Owners, and acting through its Board, has the right, but not the obligation, to enforce the provisions of the Governing Documents and any Additional Covenants that were executed pursuant or subject to the provisions of this Declaration and which indicate that they were intended to be enforced by the Association or by the Declarant. Regardless of whether the Association should fail or refuse to enforce the provisions of this Declaration or the Additional Covenants, any Owner may at any time take action to enforce the provisions hereof, and shall have the right and authority, but not the obligation, to enforce the same. No Owner has the right to require that the Association take action to enforce any provision of the Governing Documents.

12.4 **Enforcement
Methods and Means**

Subject to the limitations of law, the Association may enforce the provisions hereof at law or in equity, including, but not limited to:

12.4.1 Imposing reasonable monetary penalties after notice and an opportunity to be heard, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her guests, invitees and Tenants or residents.

12.4.2 Suspending an Owner's right to vote.

12.4.3 Suspending any services provided by the Association to an Owner or the Owner's property if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association.

12.4.4 Exercising self-help or taking action to abate any violation of the provisions hereof.

12.4.5 Requiring an Owner at the Owner's expense to remove any offending condition, structure or Improvement on the Owner's property, and further requiring the said Owner to restore his or her property to the condition in which it previously existed, without such action being a trespass.

12.4.6 Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration from continuing to perform any further activities on the Covered Property.

12.4.7 Towing vehicles which are parked in violation of the provisions hereof, subject to the Association's compliance with all local ordinances. Notwithstanding the provisions hereof, the Association may exercise other reasonable measures in any emergency situation (which shall specifically include, but not be limited to, the towing of vehicles).

12.4.8 Filing an action at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate.

The Board may weigh financial and other factors, such as possible defenses, legal merit and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to

take legal action shall not limit or waive the right of any Owner to pursue proper action, nor the right of the Association to pursue action at a future time should it so desire.

12.5 Contracts with
Others; Bulk
Service Agreements

Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant and Declarant Affiliates, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant Affiliates, provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association shall be for a term not exceeding the maximum term permitted by law.

The Association may, without limitation, provide services and facilities for the Members of the Association and their Tenants, guests, and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or may be funded as otherwise determined by the Board in accordance with this Declaration. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, trash collection and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. If all Lots and Blocks within the Covered Property are to be served by a particular bulk service agreement, the Board shall have the option either to (a) include the Association's costs under such bulk service agreement in the budget for each applicable fiscal year and thereby include such costs in the Assessments for each such applicable year, or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly). If not all Lots and Blocks within the Covered Property

will be served by a particular bulk service agreement, the Board shall include the Association's costs under such bulk service agreement in an Area Assessment assessed solely against the Lots or Blocks served for each applicable fiscal year.

12.6 Conveyance or
Change of Use of
Common Area

12.6.1 Declarant and the Association shall have broad rights to convey and resubdivide Common Area, and to change the use thereof, all as provided elsewhere in, and subject to the provisions of, this Declaration. Except as provided herein with respect to the Corps Restricted Property, nothing in this Declaration shall limit Declarant's right to alter, change the use of, or to resubdivide or cause the conveyance of Common Area free of any encumbrance or restriction of this Declaration.

12.6.2 Without limitation upon the rights of Declarant hereunder, or other provisions of this Declaration, Common Area may be resubdivided or conveyed, or the use thereof changed with the approval of the Declarant during the Declarant Control Period. Thereafter, Common Area may be resubdivided or conveyed, or the use thereof changed, with the approval of the Board, but any material and substantial conveyance, disposition or change of use of Common Area after the expiration of the Declarant Control Period, other than in the course of resubdivision of Common Areas comprising trails, walkways, drainage ways, and the like, shall also require the affirmative vote of a majority of votes represented at a meeting of Members at which a quorum is present, and called for that purpose. Declarant's written consent shall also then be required if, despite expiration of the Declarant Control Period, it then owns any part of the Covered Property.

12.6.3 Further, and without limitation, dedications and transfers of minor, insignificant, or immaterial portions of Common Area may at any time after expiration of the Declarant Control Period be approved by the Board, but Declarant's written consent shall also then be required if it then owns any part of the Covered Property

Any such action to resubdivide, convey or change the use of Common Area must comply with law, including all local zoning ordinances.

Notwithstanding the foregoing, no resubdivision nor any dedication, transfer or conveyance of Corps Restricted Property may occur in violation of the Corps Covenant or without the written consent of the Corps.

ARTICLE 13
EMINENT DOMAIN INVOLVING THE COMMON AREA

- 13.1 **Eminent Domain** In the event of a threatened Taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with any Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association. In the event of a total Taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, and all holders of liens and encumbrances, as their interest may appear of record.
- 13.2 **Representative of Owners** The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under or relating to any Taking of Common Area. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee to negotiate on its behalf.
- 13.3 **Defined Term** The term "Taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation.

ARTICLE 14
INSURANCE

- 14.1 **Authority to Purchase Insurance** The Association shall as a Common Expense purchase and maintain such property damage and liability insurance upon the Common Area and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Without limitation, the Association may consider all forms of insurance and endorsements thereto, including replacement value coverage, floodplain coverage, fidelity protection, workers compensation coverage for employees, if any, and all forms of accident, personal injury and property damage insurance, including, if appropriate, waivers of subrogation and non-contribution endorsements. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable

cost and on other reasonable terms and conditions. Insurance for property damage or casualty may in the reasonable judgment and discretion of the Board be charged as an Area Assessment in those cases where such insurance or applicable premium is covering Limited Common Area and is not protecting the broader interests of the Members.

Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers' liability insurance covering all officers and directors of the Association as well as all regular and alternate members of the ARC, Declarant, and, to the extent such insurance is reasonably available, any property manager under contract with the Association, all in amounts and on terms adequate to permit the Association to indemnify such persons pursuant to the provisions hereof and pursuant to the provisions of the Articles and Bylaws. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

14.2 **Individual
Responsibility**

It shall be the responsibility of each Owner or Occupant to provide property, casualty, liability, and other insurance on each Owner's Dwelling Unit, including for the full replacement cost thereof if so desired by the Owner. It shall further be the responsibility of each Owner or Occupant to provide casualty, liability and other insurance for all other real or personal property interests owned or held by such Owners or Occupants within the Covered Property, including, but not limited to, homeowners insurance, business insurance, loss of use coverage, hazard, fire and casualty insurance, liability insurance, and property damage insurance covering all additions and Improvements to Lots or Blocks, furnishings and personal property therein.

Each Owner and Occupant shall also provide such other insurance which is not carried by the Association as such Person desires. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by insurance obtained by the Association or if the amount of such insurance is not adequate.

14.3 **Insurance Claims**

The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association covering Common Area and improvements thereon, property or interests of the Association, liability of the Association, and other such insurance.

Each Owner shall execute and deliver releases upon the payment of claims, and do all other acts reasonably necessary to accomplish any of the foregoing.

The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

Any Owner who causes any damage or destruction of any areas for which the Association maintains insurance is responsible for the payment of any deductible portion of the insurance, which amount shall become a Maintenance Assessment against the Owner and such Owner's Lot or Block.

ARTICLE 15 DISPUTE RESOLUTION

15.1 Approval of Association Action

Prior to the Association or any Member commencing any proceeding to which Declarant, any Declarant Affiliate, or beneficiary thereof, or any Developer Owner is a party, including but not limited to an alleged defect of any Improvement, Declarant and each Developer Owner shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

15.2 Alternative Method for Resolving Disputes

Declarant, its beneficiaries, Declarant Affiliates and their beneficiaries, members, partners, officers, directors employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Owners and Members of the Association; any Developer Owner, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "**Bound Party**") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 15.3 (singularly, "**Claim**", and collectively, "**Claims**") to the procedures set forth in Section 15.4.

15.3 Claims

Unless specifically exempted below, all claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of this Declaration or other Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents; (b) relating to the design or construction of Improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of Section 15.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 15.4:

15.3.1 any action by the Association against any Bound Party to enforce the provisions hereof pertaining to Assessments, fines or charges;

15.3.2 any action by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions hereof;

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

15.3.4 any action in which any indispensable party is not a Bound Party; and

15.3.5 any action involving the Corps as a party, unless the Corps has consented to such involvement.

With the consent of all parties hereto, any of the actions identified above in this Section may be submitted to the alternative dispute resolution procedures set forth herein.

15.4 Mandatory Procedures

15.4.1 Any Bound Party having a Claim ("**Claimant**") against any other Bound Party ("**Respondent**") (the Claimant and the Respondent referred to herein being individually, as a "**Party**" or, collectively, as the "**Parties**") shall notify each Respondent in writing (the "**Notice**"), stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (c) the proposed remedy; and
- (d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

15.4.2 After Notice has been given as required by Section 15.4.1:

- (a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (b) If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant shall, if it wishes to pursue the Claim, pursue same solely by arbitration.

15.4.3 Claimant shall, if it elects to pursue its Claim, initiate arbitration of the Claim under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's most applicable rules for arbitration, as determined by AAA. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the Parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all Parties thereto.

15.5 Conflicts

In the event that a separate binding or arbitration agreement exists by and between an Owner and any Developer Owner, or in the event an Owner is bound by a separate agreement to arbitrate disputes, then in the event of a conflict between such separate agreement and the provisions hereof, the separate agreement shall control in disputes between such Owners and such Developer Owners, but neither the Association, Declarant, nor any Bound Party other than such Owners and Developer Owners who are parties to or bound by such separate agreement shall be subject to the terms of such separate agreement, whether or not in conflict, unless they agree to be bound thereby.

15.6 Amendment of Article; Severability

Without the express prior written consent of Declarant, this Article may not be amended for a period of forty (40) years from the effective date of this Declaration. The provisions of this Article shall be deemed severable, and should any portion be declared unenforceable by any court of competent jurisdiction, the remaining provisions shall be unaffected.

**ARTICLE 16
TERM; AMENDMENTS; MORTGAGEE PROTECTION**

16.1 Term; Method of Termination

This Declaration shall be effective upon its recordation and, as amended from time to time, shall continue in full force and effect unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%) of the total votes entitled to be cast by the entire Membership. Upon the recording of a Certificate of Termination executed by the President and Secretary of the Association confirming such vote, this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona. No such termination may terminate the provisions hereof setting forth prohibited uses of the Covered Property, or which are essential to avoid a violation of the provisions of the Corps Covenant, unless approved in writing by the Corps. No termination may occur without the written consent of the Declarant during the Declarant Control Period.

16.2 Amendments.

16.2.1 Declarant's Right to Amend. In addition to specific amendment rights granted elsewhere in this Declaration, so long as the Declarant Control Period exists, Declarant may amend this Declaration for any purpose, and without the consent or approval of any Owner or Member, or any other Person, regardless of whether any such amendment is uniform in nature, and such amendments may change or impact the provisions hereof

regarding voting rights, assessments and use restrictions.

16.2.2 Agency Compliance; Annexation. So long as the Declarant Control Period exists, Declarant may, without any other consent or approval, amend this Declaration to clarify the application of the provisions hereof to any land which may be annexed, or for any other reasonable purpose in connection with any land which may be annexed.

In addition to the foregoing, so long as the Declarant Control Period exists Declarant may, of its own volition and without the consent or approval of any Owner or Member, or any other Person, amend this Declaration: (a) to bring any provision hereof into compliance with applicable law; (b) to satisfy the requirements of any Agency; or (c) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof.

16.2.3 Approval by Declarant Required. Any amendment of this Declaration while the Declarant Control Period shall exist, shall require the written approval of the Declarant. Further, no amendment of any provision hereof providing express or special rights or protections for Declarant may be made without the written approval of Declarant.

16.2.4 Protection of Corps. No amendment may amend the provisions of Section 6.8.2 hereof addressing the prohibited uses of the Covered Property, or violate or conflict with the provisions of the Corps Covenant unless approved in writing by the Corps or unless made by the Declarant to correct any error or ambiguity or to more accurately reflect the scope, requirements or restrictions of the Corps Covenant.

16.2.5 Member Amendment. Except as otherwise specifically provided or permitted above, and elsewhere in this Declaration, this Declaration may be amended with the affirmative vote or written consent, or any combination thereof, of Members representing at least two-thirds (2/3) of each of the Class A and Class B votes allocable to Lots and Blocks within the Covered Property, including votes of Declarant. Declarant's written consent shall in all cases be required for amendments made during the Declarant Control Period, and absent such consent any attempted amendment shall be void.

16.2.6 Amendment of Tract Declaration. Unless expressly set forth otherwise in a Tract Declaration, at any time while the Declarant Control Period shall exist, Declarant may amend any

Tract Declaration to correct any error or ambiguity, or, with the consent of the Owner of the land governed by such Tract Declaration, for any other reason.

16.3 Mortgagee Protection

16.3.1 No Priority. No Owner, or any other party, shall have priority over any rights of any First Mortgagee pursuant to its mortgage or deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area.

16.3.2 Rights of Mortgagees. First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Area in the case of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Association.

16.3.3 Books and Records. Any Owner or First Mortgagee shall be entitled to: (a) inspect current copies of the Governing Documents, and the books, records, and financial statements of the Association during normal business hours; and (b) receive, upon written request therefor, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party.

**ARTICLE 17
ANNEXATION AND WITHDRAWAL OF PROPERTY**

17.1 Annexation of Annexable Property

Declarant may, in its sole discretion, at any time and from time to time up to the date which is fifty (50) years after the date this Declaration is recorded, annex to the Covered Property any Annexable Property. To effect such annexation, a Declaration of Annexation covering the Annexable Property (or the applicable portion or portions thereof) shall be executed and recorded by Declarant and the owner of such Annexable Property if other than Declarant.

The recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the Annexable Property (or the applicable portion or portions thereof) described therein as of the date of recordation or such later date, if any, as may be set forth in such Declaration of Annexation, making such Annexable Property (or the applicable portion or portions thereof) and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association as of the date of recordation or such later date, if any, as may be set forth in such

Declaration of Annexation. In addition to the foregoing, and notwithstanding any decision not to annex the Additional Property or any portion thereof, Declarant may grant easements for ingress, egress, utilities, and other purposes for the benefit of such Annexable Property, all on terms deemed by Declarant to be reasonable, and easements shall be deemed reserved over and across all streets and roads in favor of any land not annexed.

A Declaration of Annexation may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof). In no event, however, shall any such Declaration of Annexation revoke or conflict with this Declaration or any Tract Declaration except to the extent specifically permitted hereby.

17.2 *Annexation by Owners*

The Association may, from time to time, annex to the Covered Property additional Annexable Property provided that such annexation has been approved by the Members representing at least seventy-five percent (75%) of the total votes then entitled to be cast by Class A Members, with or without a meeting, subject to the right of the Class B Member to disapprove the action. Annexation shall also require the approval of the owner of the Annexable Property

To effect such annexation, a Declaration of Annexation covering the Annexable Property shall be executed by the President or Vice-President of the Association and attested to by the Secretary of the Association, and executed by the owner of the Annexable Property. The recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the Annexable Property described therein, making such Annexable Property and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association.

Any annexation during the period of the Class B Membership shall have the written approval of the Class B Member. Absent such approval, any such annexation shall be deemed void.

17.3 De-Annexation of Covered Property

Declarant may, in its sole discretion, at any time and from time to time up to the date which is forty (40) years after the date this Declaration is recorded, de-annex or withdraw from the Covered Property any portion or portions thereof (subject to the written consent of the owner of the portion or portions to be de-annexed or withdrawn, if other than Declarant).

To effect such de-annexation or withdrawal, Declarant shall execute and record a Declaration of De-Annexation setting forth the legal description of the portion or portions of the Covered Property to be de-annexed or withdrawn, and such Declaration shall be executed by the Declarant and the Owner of the land to be withdrawn. The land to be withdrawn may include any portion of the Covered Property, including Lots, Blocks and Common Area. Recording such Declaration of De-Annexation shall constitute and effectuate the de-annexation and withdrawal of the applicable portion or portions of the Covered Property described therein, and such property and the Owners and Occupants thereof shall no longer be subject to this Declaration or the jurisdiction of the Association. Owners and Occupants remaining within the Covered Property shall have no right or interest in such de-annexed land, including any de-annexed Common Areas, which shall no longer be subject to any use or other easements provided for herein. Notwithstanding the foregoing, except as otherwise provided in the applicable Declaration of De-Annexation, de-annexation or withdrawal of any portion or portions of the Covered Property will not be effective until the owner of the property to be de-annexed or withdrawn has paid all unpaid Assessments applicable to such property (unless exempt), prorated to the date of de-annexation or withdrawal. Further, Declarant may cause the Association to grant and convey such easements in the Covered Property as may be necessary to benefit such land de-annexed or withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

It is specifically understood that this right of de-annexation or withdrawal may be exercised in Declarant's sole and absolute discretion, and that once de-annexed or withdrawn, none of the provisions hereof or easements granted herein shall apply to or encumber the land.

17.4 Amendment of Article

The provisions of this Article may not be amended without the written approval of Declarant.

**ARTICLE 18
MISCELLANEOUS**

18.1 Additional Covenants

In furtherance of the orderly sale and development of the Covered Property, and of the protection and enhancement of the value of the Covered Property, Declarant shall have the right, power and authority (but not the obligation), where in Declarant's discretion the circumstances so warrant, to execute prior to, with or after the sale of any portion of the Covered Property by any purchaser, a supplement to this Declaration adding additional covenants or restrictions, qualifying or limiting the application of this Declaration to such land, or entirely excepting such land from the coverage hereof any from all of the restrictions, limitations or other provisions included herein.

Such additional covenants or restrictions may be referred to herein as the "**Additional Covenants**." No such Additional Covenants shall exempt any such land or the respective owners thereof from the obligations to pay Assessments hereunder or from the Assessment Lien in regard thereto or deprive such land or its Owner of membership and voting rights otherwise established by this Declaration, except that Declarant at all time shall have the right record a Declaration of De-Annexation with respect to any land.

Such Additional Covenants shall be recorded and shall be binding upon Declarant, the Association, the ARC and each Owner and Occupant. Declarant shall deliver a true and complete copy of any such Additional Covenants to the Association within a reasonable time after recordation thereof. After conveyance of a Lot or Block to an Owner thereof, de-annexation of such land or the imposition of Additional Covenants thereon shall require the consent of such Owner.

18.2 Enforcement Rights

Each Owner (including Declarant, so long as the Declarant Control Period shall exist) shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration, but only the Association, Declarant and the Corps may enforce the Corps Covenant or the provisions hereof in favor of the Corps or Corps Restricted Property.

18.3 Interpretation of the Covenants Except for judicial construction and as hereinafter provided, the Association, through the Board, shall have the exclusive right to construe and interpret the provisions of this Declaration and any Tract Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

18.4 View Impairment Neither the Declarant, nor the Association nor any Developer Owner guarantees or represents that any view or passage of light and air over and across any portion of the Covered Property, including any Lot, from adjacent Lots or Common Area will be preserved without impairment. Neither the Declarant, nor the Association nor any Developer Owner shall have the obligation to prune or thin trees or other landscaping except as required by the ARC or ARC Guidelines. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any view which exists at any point in time for or from a Lot may be impaired or obstructed by further construction, including, without limitation, by construction of Improvements (including without limitation, landscaping) by Declarant, any Developer Owner or by any third person (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant, the Association or any Developer Owner with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

18.5 Assumption of Risk Neither the Association, the members of the Board, the officers of the Association, the management company of the Association, nor the Declarant nor any Developer Owner, shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or Occupant of any Lot or any tenant, guest or invitee of any Owner or Occupant or for any property of any such persons. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or Occupant shall assume all risks associated with the use and enjoyment of the Covered Property, including all Common Area.

Neither the Association, the members of the Board, the officers of the Association, the management company of the Association nor the Declarant nor any Developer Owner shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Covered Property. Each Owner and Occupant of a Lot and each tenant,

guest, and invitee of any Owner or Occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of utility lines or utility sub-stations and further acknowledges that neither the Association, the members of the Board, the officers of the Association, the management company of the Association nor the Declarant nor any Developer Owner have made any representation or warranty, nor has any Owner or Occupant, or any tenant, guest, or invitee of any Owner or Occupant relied upon any representation or warranty, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

No provision hereof, or of the Articles or Bylaws, or of the ARC Guidelines, shall be interpreted as creating a duty of the Association, the members of the Board, the officers of the Association, the management company of the Association or the Declarant or any Developer Owner to protect or further the health, safety, or welfare of any Person, even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Covered Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the Board, the management company of the Association, and the Declarant and all Developer Owners, their directors, officers, committee and board members, employees, agents, contractors, subcontractors, successors, and assigns arising from or connected with any matter for which the liability has been disclaimed.

18.6 Severability

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

18.7 Change of Circumstances

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

18.8 Disclaimer of Representations

Notwithstanding anything to the contrary herein, Declarant makes no warranty or representation whatsoever that the plans presently envisioned for the complete development of Rocking K can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been

subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect.

No provision or content of the Specific Plan shall be deemed a representation that any facility, land or feature shall be included either in the Covered Property or the Common Area.

While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Block in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Block agrees to hold Declarant harmless therefrom.

18.9 Successors and Assigns; Affiliates and Beneficiary of Declarant

Any reference in this Declaration to Declarant shall include any successors or assignees of all or a specified portion of Declarant's rights and powers hereunder. Any such assignment shall be evidenced by a recorded instrument executed by Declarant and its successor or assignee whereby such rights and powers (or any specified portion thereof) are specifically assigned. All rights and privileges of the Declarant hereunder, shall accrue to and inure to the benefit of the beneficiary of Declarant if Declarant is a trust, and, where not already so stated, to any Declarant Affiliate where Declarant so consents or agrees. Any assignment of Declarant rights may be executed by Declarant and made retroactive.

18.10 Assignment by Declarant; Partial Relinquishment of Rights

Declarant may assign its rights as Declarant in whole or in part to any Person owing any portion of the Covered Property, including to any Declarant Affiliate. Any such assignment of Declarant rights may be executed by Declarant and made retroactive. Declarant may also relinquish certain rights, and declare a termination of the Declarant Control Period while retaining certain rights of the Declarant, including rights to appoint the directors of the Association or members of the ARC.

18.11 Notices

If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, by this Declaration or by any resolution of the Board to be given to any Owner or Resident, then, unless otherwise specified by law or by resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper of general circulation within Pima County. This

Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other lawful manner.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

DECLARANT:

Rocking K Development Co., an Arizona corporation

By: [Signature]
Name: Chad Kolodisner
Title: Vice President

STATE OF ARIZONA)
)
COUNTY OF PIMA) ss.

The foregoing instrument was acknowledged before me this 12th day of August, 2019, by Chad Kolodisner, the Vice President of Rocking K Development Co., an Arizona corporation.

Tina L. Raymond

Notary Public



My commission expires: July 25, 2022

EXHIBIT A

Additional Residential Use Restrictions

In addition to all terms and provisions of the Declaration to which this Exhibit is attached, each Owner of any portion of the Covered Property designated or restricted to Residential Use, excluding Common Area, shall be bound by the following specific restrictions, unless stated otherwise or unless the context otherwise clearly indicates:

1. Duty of Maintenance

Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot or Block, including buildings, Improvements, private drives, easement areas and grounds thereon, in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements. Each Owner shall be responsible for the maintenance and repair of all utility lines, including sewer, located within such Owner's Lot or Block, and such maintenance obligation shall include maintenance and repair beyond the Lot or Block boundary to the point of service line connection or junction in the adjacent street, Common Area or easement area.

2. No Condition of Disrepair

No Improvement on any Lot or Block shall be permitted to fall into disrepair and each such building and Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the Improvement. In the event any building or Improvement is damaged or destroyed, then, subject to approval in accordance with Article 4, such building or Improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs within the time limits established by the Board, the Board and its agents and representatives are empowered to enter on the Lot or Block and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments. Any such entry shall be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

3. On Site Grading and Drainage

No water shall be drained or discharged from any Lot or Block, or building thereon, except in accordance with approvals of the Reviewing Authority and applicable

County ordinances. No Dwelling Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with drainage plans for the Covered Property, or any part thereof, or for any Lot or Block as shown on the approved drainage plans on file with the governmental jurisdiction in which the Covered Property is located. In addition, no Owner or other Person shall change the grade or elevation of a Block or Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans, unless resubmittals have first been made and revised plans approved. This Section shall not apply to Non-Residential Blocks where development has been approved by Declarant or governed by Tract Declaration.

4. Utility Lines and Connections

All utility wires, lines, pipes, conduits, facilities, connections and installations (including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer) shall be installed and maintained underground or concealed in, under, or on structures approved in writing in advance by the Reviewing Authority. All transformers shall be placed on the surface of the Lot or Block. Temporary above-ground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of the Reviewing Authority.

Notwithstanding the above, the following permitted uses may be installed and maintained above ground:

Existing utility installations, for so long as Declarant shall approve; and

Any future relocation of existing utility installations, for so long as Declarant shall approve.

No other utility or service equipment or lines may be installed or relocated on any Lot, Block the Common Area or the Limited Common Area except as approved by the Reviewing Authority

5. Overhead Encroachment

No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way, or upon any adjacent Lot,

from ground level to a height of eight (8) feet, without the prior written approval of the Reviewing Authority.

6. Building Exteriors, Lighting, Signs and Flagpoles

All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with the ARC Guidelines and with plans and designs approved in accordance with this Declaration.

All lighting shall comply with all Specific Plan and other local regulation, including all "Dark Sky Ordinance" provisions specifically made applicable to the Covered Property.

Flag poles not protected by A.R.S. §33-1808 (A) may not be placed upon the Covered Property without the approval of the ARC, and to the fullest extent permitted by law all flag poles protected by state law may be regulated only as to size, height and location.

"For Sale" signs may not be prohibited to the extent such prohibition is impermissible pursuant to A.R.S. §33-1808 (F), but any such sign larger than that provided in such statute shall be prohibited unless approved by the ARC or by Declarant. Reasonable sign design criteria, such as requirements pertaining to uniformity or color, may be imposed by the ARC. Declarant is exempt from all regulations pertaining to signs, and may assign its exemption to Developer Owners.

7. Maintenance of Landscaping and Driveways

Unless otherwise provided in a Tract Declaration, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

a) on the Owner's Lot or Block (including set back areas), except that in the event the maintenance of any portions of such Owner's Lot or Block is the responsibility of the Association, a Subsidiary Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility;

b) portions of the Common Area adjacent to an Owner's Lot or Block and which are on the Lot's or Block's side of any wall erected on the Common Area; and,

c) public right-of-way area; between sidewalks and the street curb on the Owner's Lot or Block, or other public or

easement areas adjacent to the Owner's Lot or Block, except that in the event the maintenance of such areas is the responsibility of the Association, a Subsidiary Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

As used herein, maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly materials. All lawn areas shall be timely mowed as needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds.

All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately.

All areas shall be kept free of weeds and cultivated periodically as needed. No area shall be over watered so as to create a risk of damage to nearby structures or Improvements. Landscaping may be required to be placed on a Lot or Block within certain time frames established by the Reviewing Authority. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways and parking areas, located on the Owner's Lot or Block.

Any Owner who fails to properly maintain the landscaping upon the Lot or Block, shall be given a reasonable period to conduct such maintenance. In the event an Owner fails to provide such landscaping maintenance to his/her Lot or Block, after receiving notice from the Board to do so, and after such hearing and notice as may be required by law, the Association is empowered to enter upon the Lot or Block, conduct the necessary landscaping maintenance, and charge the cost to the Owner as a Maintenance Assessments.

In addition to the foregoing, each Owner acknowledges that the ARC Guidelines may require that each Owner install

landscaping on such Owner's Lots or Blocks, within a specified period of time after acquiring title thereto, if landscaping was not installed by the builder or Developer Owner at the time of such acquisition. Such obligation may include trees, plants or other landscaping Improvements (together with an irrigation system sufficient to adequately water the trees, plants or other landscaping Improvements). All landscaping and irrigation facilities must have the written approval of the Reviewing Authority before installation.

8. Nuisances, Dust Control and Construction Activities

No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot or Block so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Each Lot and Block shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots and Blocks must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot or Block, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or Block, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Association may, but is not required to, take action to abate what any Owner may consider a nuisance.

9. Temporary Occupancy Prohibited

No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the construction process, a temporary building or structure may be erected, installed or maintained on a Lot or Block with the prior written approval of the Reviewing Authority, including the approval of the structure's location and appearance. Such temporary structures shall be removed immediately after completion of such construction, and that portion of the Lot or Block from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with the provisions of this Declaration. Any

permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of Improvements on any Lot or Block, necessary construction materials and supplies may be stored on the Lot or Block without the need for a solid visual barrier provided such materials and supplies are kept in neat order considering the construction activities. The Reviewing Authority is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

10. Health and Welfare

In the event uses of, activities on, or facilities upon or within a Block or Lot are deemed by the Board to be a nuisance or to adversely affect the health or welfare of Owners or Occupants, the Board or the Reviewing Authority may make rules restricting or regulating their presence.

11. Incidental Uses

Subject to the provisions of any applicable Tract Declaration, the Board may approve, regulate and restrict incidental uses of property within a Residential Land Use Classification. By way of example and not of limitation, the Board may adopt Association Rules governing tennis and/or swimming clubs, swimming pools and facilities, and other recreational facilities.

12. Antennae, Dishes, etc.

No television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or Block having a Residential Land Use Classification, or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not Visible From Neighboring Property, or integrated with the Improvements and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

No solar heating or cooling equipment or other visible solar device may be installed or erected without approval of the Reviewing Authority, which shall give due regard to applicable laws restricting the limitation of such devices.

Antennae within Non-Residential Blocks shall be regulated solely by Tract Declarations approved by Declarant.

13. Clothes Drying

No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot or Block without the prior written consent of the Reviewing Authority unless they are not Visible From Neighboring Property.

15. Mineral Exploration

No Lot or Block shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, except in each case as Declarant shall specifically approve.

16. Diseases and Insects

No Owner or Occupant shall permit any thing or condition to exist upon any Lot or Block which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

17. Window Treatments

No visible window covering or reflective covering may be placed, or permitted to remain, on or adjacent to the exterior of any window of any building, structure or other improvement within Lots or Blocks having a Residential Land Use Classification without the prior written approval of the Reviewing Authority, or unless approved by the content of the ARC Guidelines.

18. Party Walls

Except as hereinafter provided, the rights and duties of Owners of contiguous Lots or Blocks which have shared walls or fences ("**Party Walls**") shall be as follows:

Each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof.

If a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests or family, the Owner or Occupant as the case may be, shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided in below.

In the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots or Blocks adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots or Blocks on the damaged or destroyed Party Wall.

In the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Reviewing Authority; whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final.

Notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (a) between Common Area and Lots or Blocks; or (b) situated on Common Area within or adjacent to a Lot or Block, the Owners and Occupants of such Lots or Blocks shall be responsible, at their expense, for all maintenance, repair, painting and replacement thereof.

This Section does not and is not intended to control or relate to Party Walls between Condominium Units, if any.

19. No Business Use/Home Occupations

No gainful occupation, profession, trade, or other nonresidential use shall be conducted on or in any Lot or Block except as set forth in this subparagraph. Declarant and a Developer Owner may maintain sales offices, construction offices and sales models on the Covered Property and an Owner or Occupant may carry on a "Home Occupation" as provided below. A "Home Occupation" as permitted hereby means work within the Dwelling Unit (such as the performance of accounting work, creation of art work, etc.) provided that:

a) the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;

b) the business activity conforms to all zoning requirements for the Lot; and

c) the business activity does not involve traffic by persons who do not reside therein, nor regular arrival of employees of the Owner; and

the business activity is lawful and consistent with the residential character of the neighborhood and does not constitute a nuisance or hazard or offensive use within the Covered Property as determined in the discretion of the Board.

If the Board determines that the Home Occupation violates the provisions hereof, then the Board shall have the authority to require that the Home Occupation in question cease immediately. In no event shall any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, be permitted within the Covered Property, except that this prohibition shall not apply to group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.

20. Leasing of Dwelling Units or Lots

The entire (but not less than all) of a Dwelling Unit may be leased from time to time by the Owner, pursuant to a written lease agreement having a term not less than six (6) months, to a Single Family tenant, subject to the provisions of this Declaration and the Association Rules. To the extent permitted by law, each Owner shall provide to the

Association such leasing information concerning any such lease as is deemed important to the Association. Any lease or rental agreement entered into between an Owner and a Tenant shall require compliance by the Tenant with all of the provisions contained in this Declaration, which provisions shall be for the express benefit of the Association and each Owner. Should a Tenant fail to so abide, the Association shall have the right to cause the Owner to declare a default under the lease and to take appropriate action, including eviction of the Tenant. To the extent permitted by law, Declarant shall have the right to limit or prohibit leasing activity for the initial two (2) year period after an Owner other than Declarant first purchases a Dwelling Unit upon a Lot.

21. Animals

No animal, livestock, poultry or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot or Block 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. No structure for the care, housing or confinement of any permitted pet shall be Visible From Neighboring Property. The Board shall have the right by Rule or otherwise to determine what shall constitute a generally recognized house pet, and what shall constitute a reasonable number of such pets.

Notwithstanding the foregoing, no permitted pets may be kept on or in any Lot or Block which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is a Tenant, guest or invitee. The Board has the right, after notice and the opportunity for a hearing, to require the removal of any pet which the Board, in its sole discretion, has determined is a nuisance.

22. Garbage and Trash Regulation

No garbage or trash shall be allowed, stored or placed on a Lot or Block except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and Block and shall not

be allowed to accumulate thereon. The Board may also require that the Association or individual Owners employ one or more of a limited number of waste management or pick-up companies to retrieve waste and refuse from the Covered Property or portions thereof. The Board may establish regulations as to the times and duration that waste containers may be Visible From Neighboring Property for pick-up, and may determine and regulate the type and appearance of waste containers.

23. Machinery and Equipment

No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot or Block, except:

a) during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a building, appurtenant structures or improvements thereon; or

b) that which Declarant or the Association may require for the development, operation and maintenance of the Covered Property or other portions of the Covered Property.

No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Dwelling Unit or other building so as to be Visible From Neighboring Property.

24. Basketball Equipment

No portable basketball goal or backboard and no permanent basketball goals or backboards may be kept on a Lot unless kept and used in accordance with the Association Rules which govern their size, design, color, material, location and hours of use. All goals and backboards must be approved by the Reviewing Authority prior to installation.

25. Playground Equipment

No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected, installed or maintained on any Lot without the prior written approval of the Reviewing Authority.

26. Spotlights and Lighting

Except as initially installed by Declarant or a Developer Owner, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or Block,

or any structure erected thereon, which in any manner will allow light to be directed or reflected on any other property except as approved by the Reviewing Authority.

27. Signs

No signs of whatever nature may be erected, placed or maintained within the Covered Property, except such signs as are permitted by the ARC Guidelines, and further except for those signs approved by the Board or by Declarant. Declarant may approve signs without any other consent or approval. The foregoing restriction shall not apply to signs required by legal proceedings or signs which may be permitted by law, or which may not be prohibited by private covenant, including certain political signs, public safety or public service emergency vehicle signs, and "for sale," "for lease" or "open house" signs that are protected by A.R.S. § 33-441 or by § 33-1808. Further, the Board may enact rules governing "for sale" for "for lease" signs, but only to the extent permitted by law.

Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon and across all Common Area for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Covered Property, but in no event later than twenty (20) years after the date this Declaration is recorded.

28. General Parking and Street Parking Limitation

As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (b) "Streets" means the streets shown on any Plat of the Covered Property.

No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Streets, except

that the Board may adopt rules and regulations governing the subject matter and further restricting such parking or establishing limited exceptions thereto, such as for loading and unloading, emergencies, and the like.

Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area. No Motor Vehicle designed or used for carrying merchandise, supplies or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Occupants or Residents, and except as other permitted hereunder.

It is also the intent of this Section to require that Motor Vehicles owned or leased by an Owner, Lessee or Resident of the Lot be parked only in the garage, carport, driveway or approved driveway expansion areas situated on the Lot, as constructed by Declarant or Developer Owners in the course of original construction approved by the Reviewing Authority. Accordingly, Motor Vehicles owned or leased by an Owner, Occupant or Resident of a Lot must be parked in the garage or carport situated on the Lot to the extent space is available in the garage or carport for the parking of such Motor Vehicles. If space is not available in the garage or carport, then Motor Vehicles owned or leased by an Owner, Occupant or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot. Parking of Motor Vehicles owned or leased by an Owner, Occupant or Resident of a Lot may only be parked on an approved driveway expansion area if space for the parking of such Motor Vehicles is not available either in the garage or carport or in the driveway constructed as part of the initial construction or Improvements on the Lot. The parking of a Motor Vehicle owned or leased by an Owner, Occupant or Resident of a Lot on a driveway expansion area is also subject to such rules and regulations as may be adopted by the Board.

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other

material. Motor Vehicles owned by guests of an Owner, Occupant or other Resident may be parked in the driveway on a Lot or, in the case of visits, parties, or events, on the Streets or in designated parking spaces on the Common Area.

Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Occupant or Resident may be parked in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board, but may not otherwise be parked or stored in the Covered Property except in an enclosed garage or in a rear yard obscured by a wall of sufficient height as established in the sole discretion of the Reviewing Authority, and except for recreational vehicles, motor homes and similar vehicles used for regular commuting and transportation, and which are no more than twenty (20) feet in length and seven and one-half (7.5) feet in height.

No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property, and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property, nor stored or parked on the Streets or any other part of the Common Area. Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or repaired on the Streets or any other part of the Common Area.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section, and establishing certain exceptions that may in certain cases be warranted. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board, the provisions of this Section shall control.

This Section is subject to the provisions of A.R.S. § 33-1818 and the prohibition, if any, expressly set forth therein which limits the Association's right to regulate public roadways, but only to the extent applicable, and only after the expiration of the Declarant Control Period; it being understood that nothing therein or herein limits the Association's ability to regulate the use of Streets during

the Declarant Control Period. This Section shall not prohibit the parking of vehicles protected by A.R.S. § 33-1809, nor shall this Section prohibit parking in Streets for special functions such as parties, weddings or other functions when temporary visitor parking is not available on individual Lots.

29. Use of Garages

Vehicles shall be kept in garages where adequate space exists, or in other designated parking areas or as otherwise required in a Tract Declaration. No garage doors shall be permitted to remain open except for a temporary purpose (such as during ingress or egress, or when the garage is physically occupied by an Owner or Occupant therein) and no less than two stalls in all garages shall be kept free of obstruction and available for parking of vehicles.

The Association may adopt additional parking restrictions including the establishment of fines and assessments for their violation, enforceable as all other Assessments and in the same manner as other provisions of this Declaration. The Association may also delegate its authority to enforce such parking restrictions to the appropriate Subsidiary Association.

No vehicle shall be parked on the Covered Property if the exterior of the vehicle contains or exhibits any signage relating to a commercial enterprise or commercial activity that is visible from the exterior of such vehicle (and the vehicle is not kept in an approved enclosed garage), except such signage that is limited to the exterior driver or passenger door of such vehicle shall be permitted if the vehicle is used by the Owner or Occupant as regular transportation in commuting to work.

No vehicle shall be permitted to park on a Lot, even if such vehicle otherwise qualifies under the preceding paragraph, or otherwise, if such vehicle is used for a commercial enterprise or activity and such vehicle has ladders, work beds, lights and/or other commercial items attached to or hanging from such vehicle so as to be Visible From Neighboring Property.

The foregoing restriction shall not apply to vehicles parked within an enclosed structure approved by the Reviewing Authority, nor to commercial vehicles of contractors, Developer Owners and others working on the Covered Property, nor to vehicles of vendors, business invitees and others in the process of temporarily serving the Covered Property.

Nothing contained herein or in any applicable Additional Covenants or Tract Declaration shall prohibit the construction and maintenance of model homes, sales offices, property management offices and parking incidental thereto by persons engaged in the construction, marketing, rental or management of Dwelling Units within the Covered Property, provided, however, that the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and ordinances of the County. Except as otherwise approved in writing by the Board:

a) all model homes and sales offices shall cease to be used as such at any time the Developer Owner (or lessee thereof as the case may be) is not actively engaged in the construction or sale of Dwelling Units within the Covered Property (provided that the foregoing portion of this sentence shall not apply to property management offices); and

b) no model home, sales office, or property management office shall be used for the sale or rental of residences not located within the Covered Property.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the foregoing matters, and may establish certain exceptions that may in certain cases be warranted.

30. School Pick-Up and Drop-Off Areas.

The Association may regulate the use of the Common Areas to provide for and designate limited pick-up and drop-off areas for school buses or other similar vehicles used to transport school children to and from school. Once designated, such areas shall be the exclusive pick-up and drop-off locations for school children within the Covered Property and school buses and similar vehicles shall be limited to stops at such designated locations.

31. Amendment

The provisions of this Exhibit A may be amended as provided in the Declaration. Without limitation, amendment may be accomplished by Declarant's execution and recordation of an instrument reciting the amendment made, and making reference to the Declaration.