

**First American Title**

When recorded mail to:

DMB Mesa Proving Grounds LLC  
7600 E. Doubletree Ranch Road, Suite 300  
Scottsdale, Arizona 85258-2137  
Attention: Mary S. Alexander, Esq.

---

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR EASTMARK RESIDENTIAL COMMUNITY**

**DO NOT REMOVE**

**This Document is being re-recorded for the sole purpose of:  
Inserting Exhibit D**

**First American Title**

WHEN RECORDED RETURN TO:

DMB Mesa Proving Grounds LLC  
c/o DMB Associates, Inc.  
7600 E. Doubletree Ranch Road  
Suite 300  
Scottsdale, Arizona 85258-2137  
Attention: Mary Alexander, Esq.

C1339  
2013

AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
EASTMARK RESIDENTIAL COMMUNITY

(Governance by Eastmark Residential Association, Inc.)

ARTICLE 10 OF THIS DECLARATION CONTAINS (I) A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, AND (II) A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS ON THESE OR OTHER PROVISIONS OF THIS DECLARATION.

## Index to Defined Terms

Adjacent Property, 28  
Annexation Property, 36  
Area of Residential Responsibility, 4  
Articles, 3  
Assembly, 4  
Assessment Lien, 24  
Assessments, 20  
Board, 5  
Board Representatives, 12  
Bound Parties, 33  
Budget, 20  
Builder, 4  
Bylaws, 3  
Capital Start-Up Fee, 26  
City, 5  
Claim, 34  
Claimant, 34  
Community Declaration, 1  
Community Plan, 2  
Complete Application, 30  
Covenant, 5  
Declaration of Annexation, 36  
Declaration of Withdrawal, 37  
Delinquency Costs, 11  
Design Review Committee or DRC, 29  
Development and Sale Period, 6  
Draining Property, 28  
Fees, 20  
Initial Residential Property, 2  
Insurance Proceeds, 15  
Manager, 10  
Memberships, 5  
Neighborhood, 13  
Neighborhood Assessments, 21  
Neighborhood Association, 7  
Neighborhood Budget, 22  
Neighborhood Expenses, 22  
Notice of Claim, 34  
Notice of Lien, 25  
Owner, 5  
Owner Membership, 8  
Property, 5  
Regular Assessments, 20  
Reimbursement Assessments, 23  
Residential Association, 5  
Residential Board, 5  
Residential Declarant, 5  
Residential Declarant Control Period, 6  
Residential Declarant Membership, 8  
Residential Declarant Party, 5  
Residential Declaration, 1  
Residential Documents, 3  
Residential Lease, 16  
Residential Operational Costs, 21  
Residential Owner, 5  
Residential Property, 5  
Residential Standards, 3  
Residential Use, 16  
Respondent, 34  
Restoration Work, 15  
Restricted Areas of Residential  
    Responsibility, 5  
Reviewer, 28  
Special Assessments, 23  
Supplemental Residential Declarations, 2  
Withdrawn Property, 37

AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
EASTMARK RESIDENTIAL COMMUNITY

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR EASTMARK RESIDENTIAL COMMUNITY (this "Residential Declaration") is made as of February 6, 2013, by DMB Mesa Proving Grounds LLC, an Arizona limited liability company ("Residential Declarant").

**RECITALS**

A. Residential Declarant is the developer of the real property located in the City of Mesa, Arizona, commonly known as "Eastmark".

B. Concurrently with the execution of this Residential Declaration, Residential Declarant has executed the Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for DMB Mesa Community (the "Community Declaration"), and recorded the same in the official records of Maricopa County, Arizona. As outlined in the "Introduction to Community" section of the Community Declaration, this Residential Declaration is the primary instrument to provide a comprehensive governance structure for single-family residential development within the Community.

C. Residential Declarant executed and recorded the Declaration of Covenants, Conditions, Restrictions and Easements for DMB Mesa Residential Community, and recorded said document on August 3, 2011 as Document No. 2011 0643809, official records of Maricopa County, Arizona (the "Original Residential Declaration"), covering certain real property (the "Original Residential Property").

D. Since executing and recording the Original Residential Declaration, Residential Declarant has subdivided certain property within Eastmark and made the Original Residential Declaration applicable to such subdivided property by recording the following documents as Supplemental Residential Declarations under the terms of the Original Residential Declaration, each of which is hereby ratified, confirmed and approved as a Supplemental Residential Declaration under this Residential Declaration:

1. Supplemental Community Declaration for Parcel 7-1, dated July 2, 2012 and recorded July 2, 2012 as Document No. 2012 0580376, official records of Maricopa County, Arizona,
2. Supplemental Community Declaration for Parcel 7-2, dated July 2, 2012 and recorded July 2, 2012 as Document No. 2012 0580393, official records of Maricopa County, Arizona,
3. Supplemental Community Declaration for Parcel 7-3A, dated July 2, 2012 and recorded July 2, 2012 as Document No. 2012 0580422, official records of Maricopa County, Arizona,

4. Supplemental Community Declaration for Parcel 7-3B, dated July 2, 2012 and recorded July 2, 2012 as Document No. 2012 0580311, official records of Maricopa County, Arizona,
5. Supplemental Community Declaration for Parcel 7-4A, dated July 2, 2012 and recorded July 2, 2012 as Document No. 2012 0580418, official records of Maricopa County, Arizona,
6. Supplemental Community Declaration for Parcel 7-4B, dated July 2, 2012 and recorded July 2, 2012 as Document No. 2012 0580336, official records of Maricopa County, Arizona,
7. Supplemental Community Declaration for Parcel 7-18, dated July 2, 2012 and recorded July 2, 2012 as Document No. 2012 0580322, official records of Maricopa County, Arizona,
8. Supplemental Community Declaration for Parcel 7-19, dated July 2, 2012 and recorded July 2, 2012 as Document No. 2012 0580348, official records of Maricopa County, Arizona,
9. Supplemental Community Declaration for Parcel 7-20, dated July 2, 2012 and recorded July 2, 2012 as Document No. 2012 0580323, official records of Maricopa County, Arizona, and
10. Supplemental Community Declaration for Parcel 7-21, dated July 2, 2012 and recorded July 2, 2012 as Document No. 2012 0580394, official records of Maricopa County, Arizona.

The real property that is subject to the foregoing documents, which is described on the attached Exhibit "A", is referred to in this Residential Declaration as the "Initial Residential Property". Any portion of the Original Residential Property that is not subject to the foregoing documents is not part of the Initial Residential Property but is part of the Annexation Property (as defined in Section 11 below).

E. In addition to the Community Declaration and associated Community Documents, and this Residential Declaration, the other documents that provide the governance structure for single-family residential development within the Community include the following:

- i. the "Community Plan" for Eastmark approved by the City of Mesa, as it may be supplemented and amended from time to time (the "Community Plan"), insofar as it pertains to single-family development,
- ii. the additional Supplemental Residential Declarations recorded from time to time with respect to various Residential Properties, as set forth in Article 11 below (collectively, the "Supplemental Residential Declarations"), which may submit additional property to this Residential Declaration, create easements on such property, establish

rights, restrictions and obligations concerning such property, designate Neighborhoods, or any of the foregoing,

iii. the various Design Guidelines adopted pursuant to the Community Plan with respect to for various types of Residential Properties within the Community, which govern new construction and modifications to Residential Properties, including structures, landscaping, and other items on Residential Properties, as they may be amended from time to time.

iv. the standards, rules and regulations of the Residential Association adopted and amended by the Board pursuant to Section 6.3, which regulate use of property, activities, and conduct within the Residential Community (the "Residential Standards") ,

v. the Articles of Incorporation of the Residential Association (the "Articles"),

vi. the Bylaws of the Residential Association (the "Bylaws"), and

vii. such resolutions and rules and regulations as the Residential Association may adopt from time to time.

The foregoing documents, as they may be amended or supplemented from time to time, are referred to in this Residential Declaration as the "Residential Documents".

F. As more fully set forth in Section 11.1 below, Residential Declarant intends to make this Residential Declaration applicable to some or all of the remaining Annexation Property.

G. The Initial Residential Property, together with any and all Annexation Property made subject to this Residential Declaration, is referred to as the "Residential Community").

H. Residential Declarant desires to establish and impose certain covenants, conditions, easements, restrictions, rights, duties, obligations and responsibilities upon each Residential Owner, under a general plan of development and operation, in order to provide for the orderly development, conduct, operation and maintenance of the Residential Community and to enhance, protect and maintain the value, desirability and attractiveness of the Residential Community.

I. Pursuant to Section 14.5 of the Original Residential Declaration, Residential Declarant reserved the right to unilaterally amend the Original Residential Declaration in any manner that has no material adverse impact on any Residential Owner.

J. Declarant desires to amend the Original Residential Declaration to reflect that the Original Residential Declaration is hereby replaced and superseded in its entirety with this Residential Declaration, and, more particularly, to reflect that the Community is now known as "Eastmark".

## DECLARATION

**NOW, THEREFORE**, Residential Declarant hereby declares that this Residential Declaration replaces and supersedes the Original Residential Declaration, in its entirety, such that the Original Residential Declaration shall have no further force or effect from and after the recording of this Residential Declaration.

**NOW, THEREFORE**, Residential Declarant hereby further declares that all and every portion of the Residential Community and all interests in the Residential Community, shall be owned, sold, leased, demised, encumbered, used, occupied, improved and conveyed subject to the covenants, conditions, easements, restrictions, rights, duties, obligations and responsibilities set forth in this Residential Declaration, which are imposed as covenants running with the land, and as equitable servitudes, pursuant to a general plan for the development of the Residential Community, and which shall run with the land within the Residential Community and shall be binding on Residential Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to the Residential Community or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Residential Owner.

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

For purposes of this Residential Declaration, the following terms are defined as follows:

1.1 **"Area of Residential Responsibility"** - (a) all real property (including Improvements) that is owned in fee by the Residential Association, (b) all real property that the Residential Association is obligated to maintain, pursuant to this Residential Declaration or any other Recorded map or document to which Residential Declarant or the Residential Association is a party, and (c) those portions of the Residential Community that are designated by Residential Declarant on a Recorded map or document as Areas of Residential Responsibility or otherwise as being areas intended to be for the common use and benefit of all Residential Owners. No Area of Residential Responsibility may be designated on any real property within the Residential Community without the consent of the Person who is the Owner of such real property at the time of such designation, and such consent may be given or withheld in such Owner's sole discretion. The Residential Association's maintenance or repair of real or personal property or Improvements due to the failure of an Owner to perform such maintenance or repair shall not cause such property or Improvements to be deemed an Area of Residential Responsibility.

1.2 **"Assembly"** - Eastmark Community Assembly, Inc., an Arizona nonprofit corporation.

1.3 **"Builder"** - a Person who (directly or through an affiliate) is licensed as a contractor and who purchases one or more unimproved lots or parcels of land within the Residential Community for further development and resale in the ordinary course of its business and not for personal use. The Residential Board may from time to time adopt more a specific definition to aid the Board in determining whether to recognize a Person as a Builder.

- 1.4 “City” – the City of Mesa, Arizona.
- 1.5 “Covenant” – the Community Recreation Covenant for Eastmark, executed by Residential Declarant and Recorded concurrently with this Residential Declaration, providing for, among other things, the establishment of the Assembly.
- 1.6 “Memberships” - the memberships of Residential Owners and Residential Declarant in the Residential Association as set forth in Section 3.1 below.
- 1.7 “Residential Association” – Eastmark Residential Association, Inc., an Arizona nonprofit corporation.
- 1.8 “Residential Board” - or “Board” - the board of directors of the Residential Association.
- 1.9 “Residential Declarant” - DMB Mesa Proving Grounds LLC, a Delaware limited liability company, or any assignee that is expressly designated by the Residential Declarant as the successor Residential Declarant in a Recorded document, in accordance with Section 12.4 below.
- 1.10 “Residential Declarant Party” - each of the following: Residential Declarant, the current and future affiliates of Residential Declarant, and the respective current and future members, managers, trustees, trust beneficiaries, agents, and representatives, of Residential Declarant and its current and future affiliates (but not any natural person). As used in this Section 1.10, the term “affiliates” means any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, Residential Declarant.
- 1.11 “Residential Owner” or “Owner” - the Owner of a Residential Property.
- 1.12 “Residential Property” or “Property” – each separately owned or defined unit of real property within the Residential Community (including, in the case of a condominium unit, all associated interests in the common elements), other than non-assessable real property that is owned by the Residential Association or any Neighborhood Association.
- 1.13 “Restricted Area of Residential Responsibility” - those portions of the Community that are designated by Residential Declarant on a Recorded map or document as Restricted Area of Residential Responsibility or otherwise as being areas intended to be for the common use and benefit of fewer than all Residential Owners. Any such designation shall specify the Residential Owners who are or will be entitled to use such area. No Restricted Area of Residential Responsibility may be designated on any real property within the Residential Community without the consent of the Person who is Owner of such property at the time of such designation, and such consent may be given or withheld in such Residential Owner’s sole discretion. Except as otherwise provided in this Residential Declaration, all provisions relating to Areas of Residential Responsibility also shall apply to Restricted Areas of Residential Responsibility.

Capitalized terms that are used in this Residential Declaration but not defined in this document shall have the meaning set forth in the Community Declaration.



**ARTICLE 2**  
**RESIDENTIAL COMMUNITY ADMINISTRATION**

*Successful communities benefit from the participation and cooperation of a variety of community members who have adopted a common vision and a common set of standards for the community. In the case of the Residential Community, these members include the Residential Declarant, the Residential Association, the Owners, the Builders, and the Neighborhood Associations. This Article describes their roles in administering the Community.*

2.1 Residential Declarant. Residential Declarant is the developer of the Residential Community and has established the vision for the Residential Community. Residential Declarant's plan for development of the Residential Community is described in the Community Plan.

Residential Declarant has reserved various rights with respect to development and administration of the Residential Community. Residential Declarant may exercise certain of these rights throughout the "Development and Sale Period", which is the period of time during which Residential Declarant or any Residential Declarant Party owns any real property that is located in the Residential Community or that is a part of the Annexation Property. Other rights of Residential Declarant may be exercised only during the "Residential Declarant Control Period", which is the period of time that Residential Declarant is entitled to appoint a majority of the members of the Residential Board. The Residential Declarant Control Period begins on the date of the Residential Association's incorporation and terminates upon the first of the following to occur:

- (a) when at least 75% of the total number of Residential Properties permitted by the Community Plan have been issued certificates of occupancy and are owned by Owners other than a Residential Declarant Party or a Builder;
- (b) December 31, 2050; or
- (c) when, in its discretion, Residential Declarant so determines and declares a termination of Residential Declarant Control Period in a Recorded instrument.

As provided in the Bylaws, Residential Declarant also has certain approval rights for a limited period after the expiration of the Residential Declarant Control Period.

2.2 Residential Association. Residential Declarant has established the Residential Association to be the entity with primary responsibility for administering the governance structure for the Residential Community in accordance with the Residential Documents. The Residential Association may exercise all rights and powers which the Residential Documents and Applicable Law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Residential Documents. It may also take any action reasonably necessary to effectuate any such right or power.

2.3 Residential Board. The Bylaws of the Residential Association provide that, on most matters, the Residential Association acts through the Residential Board. However, in some instances the Residential Documents or Applicable Law may limit the Residential Board's ability to act without the approval of the Owners. Unless the Residential Documents or Applicable Law specifically provide otherwise, the Residential Board may exercise the Residential Association's rights and powers without a vote of the Owners. Except as otherwise provided in this Residential Declaration or the Bylaws, all actions of the Board shall be determined by a majority vote of Board members. The Residential Board shall have the authority to adopt any policies and procedures, and to interpret the terms of the Residential Documents, as may be reasonably necessary or appropriate for the effective exercise of its powers and duties under this Residential Declaration.

2.4 Residential Owners. Ultimately, the character and quality of the Residential Community depends on the participation of the Residential Owners. Each Residential Owner has a responsibility to comply with the Residential Documents and to uphold the standards described in this Residential Declaration. Each Owner also has an opportunity to participate in the administration of the Residential Community through membership in the Residential Association and through service in various committee and leadership roles, as described in Articles 3 and 4 and in the Bylaws. Except as otherwise provided in this Residential Declaration or the Bylaws, all matters requiring the approval of Owners shall be determined by (i) the written consent of Owners holding a majority of the total Owner Memberships as provided in the Bylaws, or (ii) by a majority vote of a quorum of Owners at any regular or special meeting held in accordance with the Bylaws.

2.5 Builders. Much of the responsibility and credit for creating the Residential Community rests with the Builders. Except as set forth in a Supplemental Residential Declaration, Builders have the same responsibilities as Residential Owners, including the same financial obligations as the Residential Owners. However, Residential Declarant may extend to a Builder any of the rights reserved to Residential Declarant under the Residential Documents with respect to development, marketing, and sale of property in the Residential Community.

2.6 Neighborhood Associations. Portions of the Residential Community may be developed under a condominium, with a separate condominium association, and other portions of the Residential Community may have special requirements that lead Residential Declarant or the applicable Builder to establish a separate homeowners association without creating a condominium. Either type of association is a "Neighborhood Association" for purposes of this Residential Declaration. No Neighborhood Association may be created without the consent of Residential Declarant (in its sole and absolute discretion) during the Development and Sale Period, or the Residential Board thereafter. Nothing in this Residential Declaration requires the creation of a Neighborhood Association, and the authority of any Neighborhood Association shall be subordinate to that of the Residential Association. The Residential Association shall have the power to veto any action that a Neighborhood Association takes or proposes to take if the Residential Board reasonably determines the action or proposed action is adverse to the interests of the Residential Association or the Owners.

2.7 Community Alliance. The Community Alliance, as the entity with primary responsibility for enforcing the Community Declaration, also plays a role in the Residential Community, though its role in the daily lives of the Residential Owners is less extensive than that of the Residential Association. For example, the Community Alliance levies assessments against all Owners, and it enforces certain use restrictions affecting all Properties. Residential Owners and prospective buyers of Residential Properties are advised to review the Community Declaration in detail.

2.8 Assembly. The Assembly has the mission of “fostering the development of a vibrant, connected and caring community”, and is the entity with primary responsibility for sponsoring recreational activities in the Residential Community, as contemplated by the Covenant, and is funded by the Residential Owners. Residential Owners and prospective buyers of Residential Properties are advised to review the Covenant in detail.

### **ARTICLE 3**

#### **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

*Through the Association, each Residential Owner can participate in the governance and administration of the Residential Community. While the Board is empowered to conduct day-to-day management and operation of the Association, the membership and voting rights vested in each Residential Owner allow them to participate in administration of the Residential Community and influence the outcome of major decisions.*

3.1 Memberships. The Residential Association initially has two classes of Memberships: the “Owner Memberships”, which are the Memberships held by all Residential Owners (including Builders) and the “Residential Declarant Memberships”, which are held by Residential Declarant. There shall be one Owner Membership per Residential Property owned by any Person other than any Residential Declarant Party. The Residential Declarant Membership shall terminate two years after expiration of Residential Declarant Control Period; thereafter, Residential Declarant Parties shall have Owner Memberships based on Residential Properties owned by them (if any).

3.2 Voting. Each Residential Property is assigned one equal vote on all matters requiring a vote of the Owners. During such time as there is a Residential Declarant Membership, no vote shall be exercised for Residential Properties that Residential Declarant owns; instead, Residential Declarant’s consent shall be required for various actions of the Residential Board, the Owners, and committees, as specifically provided elsewhere in this Residential Declaration and the other Residential Documents.

3.3 Appurtenant Membership. Each Owner Membership is appurtenant to ownership of a Residential Property. Upon transfer or encumbrance of a Residential Property, the Owner Membership is automatically transferred or encumbered; no Owner Membership may be transferred or encumbered in any way separately from the transfer or encumbrance of a Residential Property. Any attempt to make a transfer or encumbrance prohibited by the foregoing provision is void. A Residential Owner cannot avoid any obligations or duties under

this Residential Declaration by resigning, waiving or failing to exercise its rights under any of the Residential Documents.

3.4 Multiple Owners of Properties. If more than one Person owns a Residential Property, those Persons shall designate one such Person as the voting representative for that Property, in a notice delivered to the Board. The designated Person shall cast all of the votes for such Property and shall be the Person entitled to receive notices relating to such Property under this Residential Declaration. The Residential Association shall be entitled to rely on such designation until and unless a subsequent notice signed by all of the Owners of such Property is delivered to the Board changing the voting representative.

#### **ARTICLE 4**

#### **DUTIES AND POWERS OF THE RESIDENTIAL ASSOCIATION**

*The Association has a variety of functions, including maintaining and operating Areas of Residential Responsibility, providing a variety of services to Residential Owners, insuring against various types of risks, including property damage, personal injury, and liability, and enforcing compliance with the requirements of the Residential Documents, among other functions. This Article sets forth the primary duties and powers of the Association that are associated with these functions and various other functions.*

4.1 Duties. In addition to the duties set forth elsewhere in this Residential Declaration or in any other Residential Document, the Residential Association shall perform the following duties:

4.1.1 Maintenance. The Residential Association shall maintain, repair and replace all Improvements within the Areas of Residential Responsibility, as more fully set forth in Article 6 below. The Residential Association may delegate the responsibility for cleaning, maintaining or repairing a Restricted Area of Residential Responsibility to the Owner(s) who are entitled to exclusive use of such Restricted Area of Residential Responsibility, whether on a permanent or temporary basis, and in such case the Residential Association may require that the Owner(s) be responsible for all associated costs. The Board shall be the sole judge as to the appropriate level of maintenance of all Areas of Residential Responsibility.

4.1.2 Action as Reviewer. The Residential Association shall carry out the duties of the Reviewer, as and when provided in accordance with Article 9 below.

4.1.3 Insurance. The Residential Association shall obtain and maintain the insurance required under Exhibit "C". From time to time, the Board may modify such insurance requirements in a manner consistent with evolving insurance industry underwriting standards.

4.1.4 Discharge of Liens The Residential Association shall discharge or cause to be discharged, by payment if necessary, any lien against any Area of Residential Responsibility that is owned by the Residential Association. If such lien arose from the acts or omissions of an Owner, the Residential Association shall levy a Reimbursement Assessment

against such Owner to collect the cost incurred to discharge such lien, after notice and hearing as provided in the Bylaws.

4.1.5 Assessments. The Residential Association shall determine, levy, collect and enforce Assessments as set forth in Article 7.

4.1.6 Payment of Expenses and Performance of Obligations. The Residential Association shall pay all expenses and perform all obligations incurred by the Residential Association in the ownership of Areas of Residential Responsibility and otherwise in the conduct of its affairs including, without limitation, payment of all licenses, taxes or governmental charges levied or imposed against the Residential Association or its property.

4.1.7 Cooperation with Assembly. The Residential Association shall cooperate with the Assembly on all matters involving the Assembly's obligations and responsibilities under the Covenant, to allow both entities to carry out their respective obligations. For example, to the extent feasible, the Residential Association shall permit reasonable use of Areas of Residential Responsibility by the Assembly and any clubs and other groups sponsored by the Assembly.

4.2 Powers. In addition to the powers set forth elsewhere in this Residential Declaration or in any other Residential Documents, the Residential Association shall have the following powers:

4.2.1 Manager and Employees. The Residential Association may employ or engage a professional manager or professional management company as the "Manager", which may be a Residential Declarant Party. The Manager may perform all or any part of the duties and responsibilities of the Residential Association as may be delegated in writing to the Manager. The Residential Association may employ or engage other professional consultants, staff and employees as the Board determines to be reasonable or appropriate for performing any part of the duties and responsibilities of the Residential Association. In all events, the Board shall retain ultimate authority over all matters delegated to the Manager.

4.2.2 Enforcement. The Residential Association shall have the power to enforce this Residential Declaration and all other Residential Documents. Every Residential Owner and every Neighborhood Association must comply with the Residential Documents, and each Residential Owner shall be responsible for compliance with the Residential Documents by such Owner's Permittees and Occupants, and its Occupant's Permittees. In the event of any violation of the Residential Documents (other than failure to pay a Fee or Assessment, which is address in Article 7 below), the Residential Association shall be entitled to pursue the following rights and remedies, together with any other rights or remedies available to it at law or in equity, which the Board shall have the power to select and use in any order it shall determine reasonable and prudent, without exclusion, waiver or prejudice:

- (i) bring legal action to compel compliance;
- (ii) Record a notice of violation with respect to any Residential Property on which a violation exists;

(iii) take such action as is reasonable to cure any non-compliance if the relevant Owner or Neighborhood Association fails to do so, after notice and a hearing as provided in the Bylaws; and/or

(iv) impose fines or penalties, or take other disciplinary action against any Owner or Neighborhood Association for failure to pay Assessments or for violation of any provision of the Residential Documents (which penalties, in the case of an Owner, may include but are not limited to temporary suspension of voting rights, or temporary suspension of rights to use Areas of Residential Responsibility, without denying any Owner access to or from his or her Property, or temporary suspension of non-essential services to such Owner), after notice and a hearing as provided in the Bylaws; and/or

(v) in the case of violations requiring the payment of money, levy one or more Specific Assessments or Reimbursement Assessments, and/or impose an Assessment Lien, as provided in Article 7 below.

Costs of enforcement, cure and collection against a defaulting Owner (or its Permittees, Occupants or Occupant's Permittees) or a Neighborhood Association, including any and all late fees and interest imposed under Section 7 below or otherwise, including without limitation attorneys' fees and court costs (collectively, "Delinquency Costs"), shall be assessed against the Owner or Neighborhood Association as a Reimbursement Assessment. Costs of enforcement, cure and collection against a defaulting Neighborhood Association, including Delinquency Costs, shall be assessed against all Owners within the Neighborhood Association, jointly and severally, as a Reimbursement Assessment, and, to the extent collected from one or more of such Owners, shall not be included in Residential Operational Costs. The foregoing does not limit the power of the Residential Association to impose an Assessment Lien under Article 7 below.

4.2.3 Acquisition, Alteration and Disposition of Property. The Residential Association shall have the power to acquire (by gift, purchase or otherwise), own, improve, operate, maintain, convey, lease, encumber, or otherwise dispose of real and personal property in connection with the affairs of the Residential Association.

4.2.4 Loans. The Residential Association shall have the power to borrow money on a reasonable and prudent basis to fund operations of the Residential Association that cannot be readily funded from Assessments on a timely basis, including borrowing money from a Residential Declarant Party.

4.2.5 Contracts. The Residential Association shall have the power to contract for goods and/or services for the Areas of Residential Responsibility, and as otherwise required for the Residential Association to carry out its duties and powers, subject to limitations set forth in the Bylaws or this Residential Declaration. The Residential Association may contract with third parties for the performance of the duties of the Residential Association under this Article 4.

4.2.6 Establishment of Committees and Delegation of Responsibilities. From time to time, the Residential Association may establish one or more committees for purposes related to the duties and powers of the Residential Association, as the Board may deem

appropriate, including without limitation appointment of a Design Review Committee in accordance with Section 9.2 below. The Board may delegate to any committee such power and authority as the Board may deem appropriate; provided that any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Board's right to revoke all or any part of the committee's power and authority at any time, and (ii) the Board's right to veto any committee decision that it determines to be inappropriate or inadvisable. In all events, the Board shall retain ultimate authority over all matters delegated to any committee.

4.2.7 Acceptance of Assignments or Delegations from Residential Declarant. The Residential Association shall accept from any Residential Declarant Party any assignments of rights and/or delegation of duties of such Residential Declarant Party under this Residential Declaration and/or under the Development Agreement.

4.2.8 Residential Standards. The Residential Association shall enforce (and may amend) the Residential Standards, as more fully set forth in Section 6.3 below.

4.3 Limitation of Liability. To the fullest extent permitted by Applicable Law, the Residential Association shall indemnify, defend and hold harmless each of the Board members, all officers, employees, volunteers, and committee members of the Residential Association, and the Manager (collectively, "Board Representatives"), for, from and against any and all losses, claims, demands, judgments, liabilities, damages, costs and expenses (including, without limitation, court costs and reasonable attorneys' fees and expenses) sustained or threatened against a Board Representative that result from or arise out of any act or omission that the Board Representative reasonably believed to be within the scope of his or her duties on behalf of the Residential Association, but excluding any act or omission constituting gross negligence or willful misconduct. The foregoing indemnification, defense and hold harmless provisions inure to the benefit of the estate of any Person entitled to such indemnification. The Residential Association and the Board Representatives shall not be liable to any Owner or Occupant, for any failure of any services which are to be obtained or provided by the Residential Association, or for injury or damage to person or property caused by the elements or by any Owner or any other Person, or resulting from electricity, water, ice or other elements which may leak or flow from or over any portion of the Residential Community or from any pipe, drain, conduit, appliance or equipment within the Residential Community. The Residential Association and the Board Representatives shall not be liable to any Owner or Occupant for loss or damage, by theft or otherwise of articles which may be stored or located within any portion of the Residential Community.

4.4 Commencement of Association's Duties and Powers. The duties, rights and powers of the Residential Association as described in this Residential Declaration shall commence upon the date of Recording of this Residential Declaration.

## **ARTICLE 5**

### **NEIGHBORHOODS**

*As in any larger planned community, much of the quality of life in the Residential Community will be determined by the experience of residents within their own neighborhoods. This Residential Declarant acknowledges this in a number of ways, including by providing for the establishment of "Neighborhoods" that will enhance residents' experience through the provision of special amenities and services.*

5.1 Description of Neighborhoods. A Residential Property may be part of one or more "Neighborhoods". A Neighborhood is an area within the Residential Community that is designated as such, as provided below, in which the Owners (a) enjoy the use of one or more amenities that are for the exclusive use of such Owners (and its Permittees, Occupants or Occupant's Permittees), or (b) receive benefits or services from the Residential Association that are provided to less than all Residential Properties. Any such amenity, by definition, is a Restricted Area of Residential Responsibility. A Residential Property may be assigned to more than one Neighborhood. A Neighborhood may be comprised of more than one housing type and may include Properties that are not contiguous.

5.2 Designation of Neighborhoods.

5.2.1 By Residential Declarant. Residential Declarant may establish a Neighborhood, and designate the Residential Properties that are to be part of the Neighborhood, in any Recorded document; provided that no Neighborhood may be so designated without the written consent of the Owner(s) of all the Properties within the proposed Neighborhood.

5.2.2 By the Residential Board. The Residential Board may establish a Neighborhood, and designate the Residential Properties that are to be part of the Neighborhood, upon the written petition of Owners representing at least 67% of the votes attributable to the Properties within the proposed Neighborhood. The Residential Board may add or remove Residential Properties to or from a Neighborhood, or may add or remove amenities or services enjoyed by the Neighborhood, upon the written petition of Owners representing at least 67% of the votes attributable to the Properties within the applicable Neighborhood. During the Development and Sale Period, any such establishment of a Neighborhood or any such alteration of a Neighborhood shall also require Residential Declarant's written consent.

5.3 Adding Properties to an Existing Neighborhood. The designation of a Neighborhood does not preclude the later addition of other Residential Properties to the Neighborhood. During the Development and Sale Period, Residential Declarant shall have the authority to add Properties to any Neighborhood, subject only to the consent of the Owner(s) of the Properties proposed to be added. After expiration of the Development and Sale Period, the Residential Board shall have the authority to add Properties to any Neighborhood, upon the written petition of Owners representing at least 67% of the votes attributable to the Properties within the area proposed to be added to the Neighborhood.



5.4 Maintenance of Neighborhood Amenities; Provision of Services. Unless otherwise set forth in the Recorded document establishing the Neighborhood, the costs for maintaining the Neighborhood amenities and/or for providing the relevant Neighborhood benefits or services shall be collected from the Owners of the Properties within the Neighborhood through the levy of a Neighborhood Assessment in accordance with Section 7.3 below.

## **ARTICLE 6**

### **PROPERTY MAINTENANCE, USE AND STANDARDS**

*One of the benefits of owning property in a planned community is the shared commitment among neighbors to maintain their property in a neat, attractive, and well-landscaped condition, which enhances the overall beauty and aesthetic appeal of the community. Another benefit is the shared commitment to property uses that are compatible with a residential character. This Article describes the Residential Owners' responsibilities arising from these shared commitments.*

#### **6.1 Property Maintenance**

##### **6.1.1 Maintenance and Repair by Owners and Neighborhood Associations.**

Upon taking title to a Residential Property, the Owner shall maintain the Residential Property, including all Improvements thereon, in a neat and clean condition, and in a manner consistent with the Residential Documents and Applicable Law. Such maintenance responsibility may be assumed by or assigned to the Residential Association or a Neighborhood Association pursuant to any Supplemental Residential Declaration or condominium declaration.

The Owner's maintenance obligations includes maintaining the topography of the Residential Property so as to preserve the intended storm water drainage to and from the Property, as indicated in the grading and drainage plans for the subdivision approved by the City.

In addition, each Residential Owner shall be responsible for maintaining, replacing and irrigating the landscaping, if any, lying between the boundary of the Property and (i) any wall, fence, or curb that is located on adjacent land owned by the Residential Association, or (ii) any wall, fence, or curb that is located on adjacent public or private right-of-way, in either case only if such wall, fence or curb lies within 10 feet of any Property boundary.

Within two months after any damage to or destruction of an Improvement, the Owner shall complete all repairs or reconstruction to such Improvement in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Article 9 unless the Residential Board, in its discretion, agrees to extend such period. In the alternative, if the Owner decides not to repair or reconstruct the Improvement, the Owner shall clear the Residential Property of all damaged Improvements and debris, and thereafter shall maintain it in a neat and attractive condition (landscaped or covered with decomposed granite or other material deemed suitable by the Board). Such work to clear the debris shall be completed

within three months of any damage to or destruction of an Improvement. The Owner shall pay any costs that insurance proceeds do not cover.

6.1.2 Maintenance and Repair by the Residential Association.

(i) Maintenance of Areas of Residential Responsibility. The Residential Association shall maintain the Areas of Residential Responsibility in a neat and clean condition, and in a manner consistent with the Residential Documents and Applicable Law. The Residential Association's maintenance obligations includes maintaining the topography of the Areas of Residential Responsibility so as to preserve the intended storm water drainage to and from the Areas of Residential Responsibility, as indicated in the grading and drainage plans for the subdivision approved by the City.

(ii) Damage to Areas of Residential Responsibility. If any Improvements owned by the Residential Association are damaged or destroyed by fire or other casualty, then the Residential Association shall repair or reconstruct such damaged or destroyed Improvements in a manner and to a condition that provides substantially the same benefits as originally provided by such Improvements, subject to such alterations as may be approved by the Board and the Reviewer ("Restoration Work"). All costs for completing the Restoration Work shall be paid (a) from proceeds of insurance required to be maintained by the Residential Association or otherwise available to the Residential Association (collectively, "Insurance Proceeds"), (b) from other funds available for such purposes (such as applicable reserves), and (c) to the extent the foregoing are not sufficient for the costs for completing the Restoration Work, through a Special Assessment against all Owners entitled to the use or benefit of such Area of Residential Responsibility, which Special Assessment is hereby deemed approved by all applicable Owners.

Notwithstanding the foregoing, if any repair or reconstruction of any Area of Residential Responsibility is necessary as a result of the willful or negligent acts or omissions of an Owner (or its Permittees, Occupants or Occupant's Permittees), then the cost incurred by the Residential Association in undertaking such maintenance, repair and/or replacement shall be levied against such Owner as a Reimbursement Assessment. If an Owner disputes its responsibility for the maintenance, repairs or replacement after notice is given by the Residential Association, the Owner shall be entitled to a hearing before the Residential Association as provided in the Bylaws. If the Owner (or its Permittees, Occupants or Occupant's Permittees) are determined to have responsibility, the Owner shall not have the right to challenge the amount incurred by the Residential Association to remedy such condition.

(iii) Condemnation of Areas of Residential Responsibility. If all or any part of any property owned by the Residential Association is taken by eminent domain, the net proceeds of condemnation shall be paid to the Residential Association and shall be used to restore or replace the property affected by condemnation, if and to the extent such restoration or replacement is practical. Any remaining proceeds relating to such condemnation, restoration or replacement, shall be applied to Residential Operational Costs. The Residential Association shall have the right and authority to represent all of the Owners in any condemnation proceedings

or in negotiations, settlements and agreements with the condemning authority for acquisition of part or all of any property owned by the Residential Association.

6.1.3 Maintenance and Repair by Neighborhood Associations.

Each Neighborhood Association shall maintain the real property owned by the Neighborhood Association (and the common elements in the case of a condominium) in a neat and clean condition and in a manner consistent with the Residential Documents and Applicable Law. Each Neighborhood Association also shall maintain any portion of a Residential Property for which maintenance responsibility is assumed by or assigned to the Neighborhood Association pursuant to any Supplemental Residential Declaration or condominium declaration. The Neighborhood Association's maintenance obligations includes maintaining the topography of the relevant property so as to preserve the intended storm water drainage to and from the property, as indicated in the grading and drainage plans for the subdivision approved by the City.

6.2 Permitted and Prohibited Uses.

6.2.1 Residential Use. Each Residential Property may be used only for Residential Uses. As used in this Residential Declaration, the term "Residential Use" means use for residential purposes, excluding use for transient lodging, but including (i) operation of a home business that is permitted under Applicable Law and that does not entail visiting customers, clients, employees or staff and for which there is no signage visible from the exterior of the Residential Property, (ii) leasing a Residential Property for Residential Uses in accordance with Section 6.2.2 below, and (iii) to the extent expressly authorized by Residential Declarant, activities associated with construction, marketing, and selling single-family dwellings for Residential Uses, including without limitation one or more on-site marketing offices and sales offices, signs, flags, model homes, and special lighting features or displays.

6.2.2 Leasing. Any Residential Property that is leased shall be leased only in its entirety. Separate rooms, floors, or other areas within a dwelling may not be separately leased. Any detached structure designed for use as a guest house may not be leased separate from the main dwelling; an Owner may not lease the main dwelling and move into the guest house. Each lease of a Residential Property (a "Residential Lease") must have a minimum lease term of 180 consecutive days; provided that a greater minimum lease term may apply in a particular area if so indicated in the applicable Supplemental Residential Declaration.

**All Residential Leases shall be in writing and shall expressly disclose that the Occupants are bound by and obligated to comply with the Residential Documents. The Owner must give the Occupant copies of the Residential Documents. However, failure to include such a provision in a Residential Lease or give copies of such documents does not excuse the Owner or the Occupant from compliance with the Residential Documents.**

Within ten (10) days after signing a Residential Lease, and in any event before the commencement of the term of the Residential Lease, the Owner-landlord shall give

notice of the Residential Lease to the Residential Association, including a copy of all signed documents, and shall provide any additional information the Residential Association may reasonably require. The Residential Standards may include additional provisions governing Residential Leases.

6.2.3 Timesharing/Fractional Ownership Programs. Unless otherwise expressly permitted under the applicable Supplemental Residential Declaration, no Residential Property may be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Property rotates among participants in the program on a fixed or floating time schedule over a period of years.

6.3 Residential Standards. The initial Residential Standards are attached as Exhibit "D" and are in full force and effect as of the Recording of this Residential Declaration. The Residential Standards may be amended in accordance with the procedures set forth below; an amendment of the Residential Standards shall not be considered an amendment to the Residential Declaration, and shall not be governed by Section 14.5 below.

6.3.1 Authority and Procedures.

(i) Residential Board Authority. Subject to the notice requirements in subsection (iii) below, and the Residential Board's duty to exercise judgment and act reasonably on behalf of the Residential Association and the Owners, the Residential Board may adopt new Residential Standards and modify or rescind existing Residential Standards by majority vote of the Residential Board at any Residential Board meeting; provided that, during the Development and Sale Period, any new Residential Standard or modification or rescission of any existing Residential Standard shall require the written consent of Residential Declarant.

(ii) Membership Authority. Subject to the notice requirements in Subsection (iii) below, Owners representing at least 67% of the Owner Memberships may also adopt new Residential Standards and modify or rescind existing Residential Standards at any meeting of Owners duly called for such purpose; provided that, during the Development and Sale Period, any new Residential Standard or modification or rescission of any existing Residential Standard shall require the written consent of Residential Declarant.

(iii) Notice. The Residential Board shall give notice to all Residential Owners concerning any new Residential Standard or modification or rescission of any existing Residential Standard at least ten (10) business days before the meeting of the Residential Board or the Owners at which such action is to be considered. At any such meeting, the Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote. This notice requirement does not apply to administrative and operating policies that the Residential Board may adopt relating to Areas of Residential Responsibility, such as hours of operation of a recreational facility, and the method of reserving use of a facility.

(iv) Effective Date. Any new Residential Standard or modification or rescission of any existing Residential Standard shall take effect thirty (30) days after the date on

which the Board gives notice of such action to the Residential Owners, or any earlier date that the Residential Board may determine to be necessary due to reasons of health or safety.

(v) Conflicts. No action taken under this Section 6.3 shall have the effect of modifying or repealing the Design Guidelines or any provision of this Residential Declaration other than the Residential Standards attached hereto. In the event of a conflict between the Design Guidelines and the Residential Standards, the Design Guidelines shall control. In the event of a conflict between the Residential Standards and any provision of this Residential Declaration, this Residential Declaration shall control.

6.3.2 Limitations. Except as may be set forth in this Residential Declaration (either initially or by amendment) or in the initial Residential Standards set forth in Exhibit "D", all Standards shall comply with the following provisions:

(i) Similar Treatment. The Residential Standards shall apply to all Residential Properties, provided that the Residential Standards may vary among different Neighborhoods or housing types.

(ii) Displays. No Residential Standard shall abridge an Owner's right to display political, religious, or holiday symbols and decorations on his or her Residential Property of the kinds normally displayed in residential neighborhoods, nor shall any Residential Standard regulate the content of political signs. However, the Residential Association may adopt time, place, and manner restrictions with respect to signs for any purpose, including reasonable limitations on size, style, placement, timing, and number. The Residential Association may prohibit or otherwise regulate signs that have a commercial purpose (including but not limited to those installed by a Builder, landscaper, architect, security system provider, painter, etc.). Subject to Applicable Law, the Residential Association shall have the right to remove and discard any sign, billboard, or other advertising structure that does not comply with the Residential Declaration, Design Guidelines or any Residential Standard.

Notwithstanding the above, the Residential Association may not prohibit the outdoor display of an American flag by an Owner on his or her Residential Property if the flag is displayed in a manner consistent with the federal flag code. The Residential Board may enact reasonable rules regulating the placement and manner of displaying American flags and may limit the size of any flag to the extent consistent with the federal flag code.

(iii) Household Composition. No Residential Standard shall interfere with an Owner's freedom to determine household composition, except that the Residential Association may impose and enforce reasonable occupancy limitations and conditions based the size and facilities of a Residential Property and its fair share use of the Areas of Residential Responsibility. In addition, the composition of all households shall comply with local zoning regulations or ordinances, as may exist currently and as may be supplemented with an amendment from time to time.

(iv) Activities within Dwellings. No Residential Standard shall interfere with the activities carried on within a dwelling, except that the Residential Association

may prohibit activities that are not Residential Uses, and it may restrict or prohibit activities that create monetary costs for the Residential Association or other Residential Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, that are illegal, or that are a nuisance or otherwise are an unreasonable source of annoyance.

(v) Allocation of Burdens and Benefits. No Residential Standard shall alter the allocation of financial burdens among the various Residential Properties or rights to use the Areas of Residential Responsibility to the detriment of any Owner over that Owner's objection expressed in writing to the Residential Association. Nothing in this provision shall prevent the Residential Association from changing the Areas of Residential Responsibility available, from adopting generally applicable standards for use of Areas of Residential Responsibility, or from denying use privileges to those who are delinquent in paying Assessments, abuse the Areas of Residential Responsibility, or violate the Residential Documents.

(vi) Abridging Existing Rights. No Residential Standard shall require that a Residential Owner dispose of personal property that was kept in or on his or her Residential Property in compliance with the Residential Standards in effect at the time such personal property was brought onto the Residential Property. This exemption shall apply only during the period of such Owner's ownership of the Residential Property and shall not apply to subsequent Owners who take title to the Residential Property after adoption of the Residential Standard.

6.3.3 Owners' Acknowledgment and Notice to Purchasers. By accepting a deed to a Residential Property, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Residential Property is limited and affected by the Residential Standards, which may change from time to time. All Residential Property purchasers are hereby notified that the Residential Association may have adopted changes to the Residential Standards and that such changes may not be set forth in any Recorded document. A copy of the current Residential Standards and all administrative policies are available from the Residential Association upon request. The Residential Association may charge a reasonable fee to cover its reproduction cost.

6.4 Transfer of Title. Any Residential Owner desiring to sell or otherwise transfer title to his or her Residential Property shall give the Residential Association at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Residential Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner of the Residential Property, including Assessment obligations, until the date upon which the Residential Association receives such notice, notwithstanding the transfer of title.

**ARTICLE 7**  
**ASSOCIATION FINANCES**

*This Article provides for various types of funding to cover expenses that the Residential Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Residential Documents. The primary source of funding is the Assessments that the Residential Association will levy against the Residential Properties and collect from the Residential Owners. Assessments are secured by a lien on each Residential Property as described in this Article.*

7.1 Covenant to Pay Assessments and Fees. Each Residential Owner covenants and agrees to pay all assessments ("Assessments"), fees ("Fees") and other charges levied against such Owner's Property in accordance with this Residential Declaration and any other applicable Residential Documents, and each Owner acknowledges and agrees that its Property is subject to any Assessment Lien imposed in accordance with this Residential Declaration. The Residential Board may require advance payment of Assessments at the closing of the transfer of title to a Residential Property.

7.2 Regular Assessments. The Board shall levy "Regular Assessments", which shall be calculated, allocated and levied as follows:

7.2.1 Budget. The Board shall establish a budget for Residential Operational Costs (as defined in Section 7.2.5 below) for each fiscal year, including such reserves and contingency amounts as the Board deems necessary (the "Budget"). The Regular Assessments levied by the Board will be in an amount sufficient to pay for Residential Operational Costs for the fiscal year reflected in the Budget, and the Budget will include a statement of the expected Regular Assessment. The Board will endeavor to give notice of the Budget and expected Regular Assessment amount to the Owners at least thirty (30) days in advance of the beginning of each fiscal year, but failure to timely give such notice shall not affect the validity of any Assessment levied by the Board. The Budget is not subject to Owner approval. The Residential Board is not obligated to convene a special meeting of the Owners for the purpose of considering the Budget unless the requisite number of Residential Owners petition the Board for such a special meeting in the manner set forth in the Bylaws. Any such petition must be presented to the Residential Board within 20 days after the Residential Board's approval of the Budget. If the Residential Board fails for any reason to adopt the Budget for any fiscal year, then the Budget most recently adopted shall continue in effect, increased by 20% (unless Applicable Law mandates otherwise), until a new Budget is adopted.

7.2.2 Allocation. Except as set forth in Section 7.6 below, the Regular Assessment levied against each Owner shall be an amount equal to the total Residential Operational Costs divided by the total number of Residential Properties (regardless of ownership) as of the date of the Budget. Residential Properties that are assessed at a discounted percentage in accordance with Section 7.6 below shall be counted at the same percentage. For example, if four Residential Properties were each assessed at a fifty percent (50%) discount, the foregoing calculation would count them as two Residential Properties.

7.2.3 Commencement of Regular Assessments. The Board will commence the levy of Regular Assessments on such date as Residential Declarant may determine in its sole and absolute discretion. The Board will commence the levy of Regular Assessments against the Owners of property annexed into the Residential Community as and when specified in the applicable Supplemental Residential Declaration.

7.2.4 Periodic Payments. Regular Assessments shall be due and payable in advance, on the first day of each fiscal year of the Residential Association, unless the Board directs otherwise. The Board may in its sole discretion permit Owners to pay Regular Assessments through an automatic deduction from the Owner's bank account.

7.2.5 "Residential Operational Costs" mean the costs and expenses incurred by the Residential Association in connection with the Areas of Residential Responsibility and the Residential Association's performance and exercise of its duties, obligations and powers set forth in this Residential Declaration. Residential Operational Costs will include, but will not be limited to, the costs and expenses incurred by the Residential Association in connection with:

(i) operating, maintaining, repairing, replacing, lighting, cleaning, and removing trash and debris from, all Areas of Residential Responsibility, and maintaining reasonable capital replacement funds and reserves for the Areas of Residential Responsibility, including the payment of real or personal property taxes for any Areas of Residential Responsibility that are owned by the Residential Association;

(ii) securing and maintaining insurance required to be maintained by the Residential Association pursuant to this Residential Declaration, including insurance applicable to the Areas of Residential Responsibility;

(iii) securing, maintaining, repairing and replacing furniture, fixtures and equipment for Residential Association purposes, including without limitation, office furniture, office equipment, and maintenance equipment;

(iv) securing and maintaining all licenses and permits of the Residential Association;

(v) contracting with the Manager (if any), and with attorneys, accountants and other professional consultants;

(vi) employing personnel, including the salaries, benefits and insurance costs of the personnel; and

(vii) enforcing the Residential Documents, to the extent that the costs of enforcement are not recovered from the Owners or other parties against whom enforcement is pursued.

7.3 Neighborhood Assessments. The Board shall levy "Neighborhood Assessments", which shall be calculated, allocated and levied as follows:



7.3.1 Neighborhood Budget. The Board shall establish a budget for Neighborhood Expenses (as defined in Section 7.3.6 below) for each Neighborhood for each fiscal year, including such reserves and contingency amounts as the Board deems necessary (each, a "Neighborhood Budget"). The Neighborhood Assessments for each Neighborhood will be in an amount sufficient to pay for applicable Neighborhood Expenses for the fiscal year reflected in the Neighborhood Budget, and each Neighborhood Budget will include a statement of the expected Neighborhood Assessment. The Board will endeavor to give notice of the Budget and expected Neighborhood Assessment amount to the applicable Owners at least thirty (30) days in advance of the beginning of each fiscal year, but failure to timely give such notice shall not affect the validity of any Assessment levied by the Board. The Neighborhood Budget is not subject to Owner approval. The Residential Board is not obligated to convene a special meeting of the Owners within the Neighborhood for the purpose of considering the Budget. If the Residential Board fails for any reason to adopt a Neighborhood Budget for any year, then the Neighborhood Budget most recently adopted shall continue in effect, increased by 20% (unless Applicable Law mandates otherwise) until a new Neighborhood Budget is adopted.

7.3.2 Allocation. Each Neighborhood Assessment shall be in an amount equal to the total amount of the applicable Neighborhood Budget for the applicable fiscal year divided by the total number of Residential Properties (regardless of ownership) in the Neighborhood as of the date of the Budget.

7.3.3 Commencement of Neighborhood Assessments. The Board will commence the levy of Neighborhood Assessments on such date as Residential Declarant may determine in its sole and absolute discretion. The Board will commence the levy of Neighborhood Assessments against the Owners of property annexed into the Residential Community as and when specified in the applicable Supplemental Residential Declaration.

7.3.4 Periodic Payments. Neighborhood Assessments shall be due and payable in advance, on the first day of each fiscal year of the Residential Association, unless the Board directs otherwise. The Board may in its sole discretion permit Owners to pay Neighborhood Assessments through an automatic deduction from the Owner's bank account.

7.3.5 Segregation of Proceeds. All amounts collected as Neighborhood Assessments shall be expended solely for the benefit of the Neighborhood from which they were collected and shall be accounted for separately from the Residential Association's general funds.

7.3.6 "Neighborhood Expenses" means all costs and expenses that the Residential Association incurs in connection with the ownership, maintenance, and operation of Neighborhood amenities and in providing other benefits and services to a Neighborhood, including any operating or capital reserve, which may include a reasonable administrative charge in such amount as the Residential Board deems appropriate, provided that any such administrative charge is applied at a uniform rate among all Neighborhoods receiving the same service.

7.4 Special Assessments. The Board may levy additional Assessments for unexpected Residential Operational Costs, including insufficient operating or reserve funds, or

for an unexpected expense that is required by an order or other directive of any court or other governmental authority ("Special Assessments"), which shall be calculated, allocated and levied as follows:

7.4.1 Allocation of Special Assessments. Special Assessments shall be allocated among all Residential Properties in the same manner as Regular Assessments, as set forth in Section 7.2.

7.4.2 Commencement of Special Assessments. The Board may levy a Special Assessments at any time after the date of the Recording of this Residential Declaration.

7.4.3 Payment. Special Assessments may be due and payable in one payment or periodically as the Board shall direct at the time that the Special Assessment is levied; provided, however, that no installment of a Special Assessment shall be due from an Owner sooner than thirty (30) days after the Board has adopted its resolution authorizing such Special Assessment.

7.4.4 Special Assessments against Neighborhoods. The Board may levy a Special Assessment against the Owners in a specific Neighborhood, related to unexpected Neighborhood Expenses, in a manner consistent with the foregoing.

#### 7.5 Reimbursement Assessments.

7.5.1 General Provisions. The Board may levy "Reimbursement Assessments" against any Residential Owner to reimburse the Residential Association for costs incurred (a) to repair, restore or replace any Property for which the Residential Association has maintenance or repair responsibility, where the need for such repair, restoration or replacement is due to the willful or negligent acts or omissions of an Owner (or its Permittees, Occupants or Occupant's Permittees), (b) to enforce this Residential Declaration against such Owner (or its Permittees, Occupants or Occupant's Permittees), (c) to bring an Owner or a Property into compliance with the provisions of the Residential Documents, or (d) for such other purposes as are expressly contemplated by this Residential Declaration. Each Reimbursement Assessment shall bear interest at the rate of eighteen percent (18%) per annum, commencing upon the due date of such Assessment.

7.5.2 Notice. Before the Board levies a Reimbursement Assessment against an Owner, the Board shall give notice to such Owner and shall provide such Owner with an opportunity for a hearing before the Board in accordance with the Bylaws.

7.5.3 Payment. Reimbursement Assessments shall be due and payable thirty (30) days after the date of the notice of the levy given to the applicable Owner.

7.6 Adjustment of Assessments. Regular Assessments and Special Assessments may be levied progressively, in a manner consistent with the provisions of Section 4.5 of the Community Declaration.

7.7 Administration Fees. The Board may impose fees to help defray administrative expenses, including without limitation (a) fees for the preparation or completion of estoppel certificates requested pursuant to Section 14.8 below (which may include an additional amount for an expedited request), (b) document preparation fees in connection with the transfer of a Residential Property (which may include an additional amount for an expedited request), and (c) fees to reimburse the Board in instances where the Board is required to pay a fee to an outside management company.

7.8 Residential Declarant Subsidy. Until the end of the calendar year in which the Development and Sale Period ends, Residential Declarant shall have the right (but not the obligation) to exempt its own Property and any Property owned by a Residential Declarant Party from the requirement to pay Assessments (other than Reimbursement Assessments). Residential Declarant shall make such election at the commencement of each fiscal year and such election shall be binding on Residential Declarant for such fiscal year. If Residential Declarant makes such election, then Residential Declarant shall pay to the Residential Association, in the form of a subsidy, the difference between the actual Residential Operating Costs for the fiscal year (including funding of reserves) and the actual income from Fees and Assessments payable by all other Owners during the fiscal year.

7.9 Personal Obligation for Fees and Assessments. Each Fee and Assessment payable with respect to a Residential Property, and all associated Delinquency Costs, are the personal obligation of the Owner(s) of such Residential Property at the time when the Fee or Assessment becomes due, and is also an obligation secured by the Residential Property. Although an Assessment Lien is binding upon subsequent Owners of a Property, the personal obligation for delinquent Fees and Assessments is not binding on subsequent Owners of a Property unless expressly assumed by them. Notwithstanding any transfer of title, a delinquent Owner shall not be relieved of such personal obligation until such obligation is paid in full. No Owner shall be exempt from liability for payment of any Fee or Assessment by waiver of any right under any Residential Document, or by non-use of any of the Areas of Residential Responsibility, or by the abandonment of such Owner's interest.

7.10 Assessment Lien. Subject to the limitations of Applicable Law, Residential Declarant hereby establishes, for the benefit of the Residential Association, a lien against each Residential Property, to secure payment of all Assessments and Fees (including all Delinquency Costs) levied with respect to the Residential Property (each, an "Assessment Lien"). The priority of an Assessment Lien shall be fixed as of the date of the Recording of this Residential Declaration; provided that it shall be subordinate to (a) the liens of all taxes, bonds, assessments, and other levies which by Applicable Law would be superior, and (b) the lien or charge of any First Mortgage.

7.11 Effect of Nonpayment of Assessments. If any Owner fails to pay any Fee or Assessment when due, then the Board may impose a late fee and may also impose and interest on the unpaid amount until the amount paid in full. Such late fee and/or interest shall be in such amount as may be established by resolution of the Board from time to time, and shall also be subject to any grace period or cure period as may be established by resolution of the Board from time to time. Notwithstanding the foregoing, in no event shall the interest or late charges

payable hereunder exceed the maximum amount permitted by Applicable Law. Except as provided in Section 7.4.1 above with respect to Reimbursement Assessments, or as may be provided in any contrary resolution of the Board, interest shall accrue at the then prevailing legal rate under Arizona law.

7.12 Enforcement and Remedies. If any Fee or Assessment is delinquent, the Residential Association shall be entitled to pursue the following rights and remedies, together with any other rights or remedies available to it at law or in equity, which the Board shall have the power to select and use in any order it shall determine reasonable and prudent, without exclusion, waiver or prejudice:

(i) bring an action at law and recover judgment against the Owner(s) personally obligated to pay the Fee or Assessment, including all Delinquency Costs; and

(ii) Record a notice of the Assessment Lien (a "Notice of Lien") against all Property(ies) of the Owner(s) personally obligated to pay the Fee or Assessment and, if applicable, against the Property to which the Fee or Assessment pertains, and, to the extent allowable under Applicable Law, thereafter foreclose the Assessment Lien in the manner provided for foreclosure of realty mortgages under Arizona law and without prejudice to the right of the Residential Association to recover any deficiency. The date of the Recording of the Notice of Lien shall not affect the priority of the Assessment Lien, such priority being established pursuant to Section 7.10 above. The Notice of Lien shall state (a) the amount of the unpaid Fee or Assessment (including Delinquency Costs to the extent then known), (b) a description of each Property against which the Fee or Assessment is levied, and (c) the name of the Owner(s) of each such Property.

7.13 Verification of Assessments. In addition to any additional requirement under Applicable Law, the Residential Association shall, within ten (10) days after request by any Owner or Mortgagee of a specified Property, and for a reasonable charge, furnish a certificate (addressed to any Person specified by such Owner or Mortgagee) signed by an authorized representative of the Residential Association setting forth whether the Fees and Assessments on such Property have been paid and identifying the amount of any unpaid Fees or Assessments levied against such Property. Such a certificate shall be deemed conclusive evidence of the accuracy of the statements made therein, solely in favor of the Person to whom the certificate is addressed.

7.14 Transfer of Property. The sale or transfer of any Property, or other interest therein, shall not affect the Assessment Lien as to such Property. The sale or transfer of any Property, or other interest therein, pursuant to foreclosure or trustee's sale pursuant to a prior recorded Mortgage shall extinguish the Assessment Lien (including fees, late charges, fines or interest levied in connection therewith) as to such Property so transferred, as to payments which became due prior to or after such sale or transfer. No sale or transfer shall relieve such Property from liability for any Assessments thereafter becoming due or from any applicable Assessment Lien. If a Property is transferred, the transferor shall remain liable to the Residential Association for all unpaid Assessments against such Property through and including the date that written notification of the transfer is delivered to the Residential Association.

7.15 Exempt Property. The following property shall be exempt from payment of Regular Assessments, Neighborhood Assessments, and Special Assessments:

- (i) All real property that is owned by the Residential Association;
- (ii) Any property dedicated to and accepted by any governmental authority or public utility; and
- (iii) Any property owned by any Neighborhood Association for the common use and enjoyment of its Owners, or any common elements within a condominium.

7.16 Capital Start-Up Fee. Each initial Owner of a Residential Property (excluding Builders and Residential Declarant Parties) shall make a one-time contribution to the working capital of the Residential Association in an amount equal to one-fourth of the annual Regular Assessment for that Residential Property for the year in which it was acquired by such Owner ("Capital Start-Up Fee"). The Capital Start-Up Fee shall be in addition to, not in lieu of, the annual Regular Assessment and any Neighborhood Assessment levied on the Residential Property, shall not be considered an advance payment of such Assessments, and shall be due and payable immediately upon transfer of title. The Residential Association may use the Capital Start-Up Fees to cover initial start-up expenses, operating expenses, establishment of initial reserve accounts, and other expenses which it incurs pursuant to this Residential Declaration and the Bylaws.

## **ARTICLE 8** **EASEMENTS**

*The easements created in this Article grant rights to Residential Owners to use various Areas of Residential Responsibility and create various rights for the benefit of Residential Owners, Residential Declarant, the Residential Association, and others over various parts of the Residential Community. Some of these rights are related to development and construction within the Residential Community and on adjacent property, while others relate to the rights of the Residential Association to come upon property of others to carry out its responsibilities.*

8.1 Easements in Areas of Residential Responsibility. Residential Declarant grants to each Residential Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Areas of Residential Responsibility for the purposes for which they were developed, subject to:

- (i) The terms and conditions of the Residential Documents and any other applicable covenants, restrictions, easements, or other recorded instruments affecting the Areas of Residential Responsibility; and
- (ii) Any restrictions or limitations contained in any deed conveying such property to the Residential Association; and

(iii) Any rights of Residential Owners to the exclusive use of those portions of Restricted Areas of Residential Responsibility.

Any Owner may extend his or her right of use and enjoyment to his or her Permittees, subject to reasonable Residential Board regulation. A Residential Owner who leases his or her Property shall be deemed to have assigned all such rights to the applicable Occupant through out the term of the Residential Lease.

8.2 Easements of Encroachment. Residential Declarant hereby establishes reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Residential Property and any adjacent Areas of Residential Responsibility and between adjacent Residential Properties due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Residential Declaration), to a distance of not more than two feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an encroachment easement exist if the encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

8.3 Easements for Utilities, Etc. Residential Declarant reserves for itself the non-exclusive right and power to grant and record such specific easements throughout the Residential Community (but not through a structure) to the extent reasonably necessary to:

(i) install, remove, maintain, replace and repair electrical lines and other utilities and infrastructure, security systems, and drainage systems as determined by Residential Declarant to serve the Residential Community and which are consistent with the Design Guidelines;

(ii) install walkways, pathways and trails, street lights, and signage on property that Residential Declarant or the Residential Association owns or within public rights-of-way or easements reserved for such purpose on a recorded subdivision plat;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above;

(iv) access and read utility meters; and

(v) otherwise to develop the Residential Property and any other property owned by any Residential Declarant Party;

with the location of the specific easements being subject to the written approval of the Owner of the burdened Residential Property, which approval shall not unreasonably be withheld, delayed, or conditioned.

All work associated with the exercise of the easements described in this Section 8.3 shall be performed so as to minimize interference with the use and enjoyment of the Residential Property burdened by the easement. Upon completion of the work, the Person exercising the easement

shall restore the affected Residential Property, including affected landscaping, to the condition existing immediately prior to the commencement of the work, to the extent reasonably possible.

Notwithstanding the above, Residential Declarant reserves the right to deny access to any utility or service provider, or to condition such access on negotiated terms, to the extent permitted by Applicable Law.

8.4 Easements for Drainage. As and where the grading and drainage plans approved by the City of Mesa contemplate that storm water is intended to drain from the surface of one Residential Property or Area of Residential Responsibility (the "Draining Property") onto an adjacent Residential Property or Area of Residential Responsibility (an "Adjacent Property") , the owner of the Adjacent Property shall be deemed to have granted an easement for such drainage to the owner of the Draining Property.

8.5 Easements for Maintenance, Emergency, and Enforcement. Residential Declarant hereby reserves for itself and grants to the Residential Association easements over each Residential Property as necessary to enable the Residential Association to carry out its responsibilities and enforcement rights under this Residential Declaration. The Residential Association shall also have the right, but not the obligation, to enter upon any Residential Property for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Residential Documents, and to enforce the Residential Documents. In the case of single family detached dwellings, such right shall be limited to entry onto the exterior portions of the Residential Property, not into the dwelling. Any member of the Residential Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

## **ARTICLE 9**

### **ARCHITECTURE, LANDSCAPING AND AESTHETIC STANDARDS**

*Maintaining the Residential Community's character and quality will be accomplished in large part from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This Article explains how those standards are established through the Design Guidelines and how they are applied and maintained through a design review process requiring prior approval for construction and exterior modifications on all Residential Properties.*

9.1 Design Review Authority. All authority for architectural and site plan review shall be exercised by the "Reviewer", which shall be Residential Declarant until the expiration of the Development and Sale Period, and which thereafter shall be the Residential Association. Actions of Residential Declarant, in its capacity as the Reviewer, shall be binding on the Residential Association.

All Improvements are subject to standards for design and aesthetics adopted pursuant to the Community Plan and this Article. No Improvements may be constructed or

installed in the Residential Community without the prior written approval of the Reviewer, after compliance with the design review process set forth in this Article.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to review so long as they are made in good faith and in accordance with required procedures. The individuals acting as Reviewer will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly.

Approval under this Article is not a substitute for any approvals or reviews required by the City of Mesa or any governmental agency or entity having jurisdiction over architectural or construction matters. Even if not specifically prohibited in the applicable Design Guidelines, approval under this Article of any Improvements may be denied if such Improvements are contrary to any Applicable Law.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged Improvements in a manner consistent with the plans and specifications most recently approved for such Improvements. Generally, no approval is required for work done to the interior of an Improvement; however, modifications to the interior of porches, patios, and any other portions of an Improvement and all landscaping visible from outside of the Improvement do require prior approval.

This Article shall not apply to the design and construction activities undertaken by any Residential Declarant Party, or to the design and construction activities undertaken by the Residential Association after expiration of the Residential Declarant Control Period.

9.2 Design Review Committee. The Reviewer may establish a Design Review Committee ("Design Review Committee" or "DRC") to act on its behalf in exercising its authority under this Article 9. The DRC, if and when established, shall consist of at least three, but not more than seven, individuals who shall serve and may be removed and replaced in the Reviewer's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Reviewer may compensate DRC members in such manner and amount, if any, as the Reviewer may determine appropriate.

9.3 Design Guidelines. The Residential Declarant shall prepare the initial Design Guidelines. In addition, Residential Declarant may create specific provisions recorded in Supplemental Residential Declarations applicable to Neighborhoods within the Residential Community to specify minimum and maximum house sizes and other design requirements applicable only to Improvements within that Neighborhood. The Design Guidelines are intended to provide guidance to Owners, Builders, and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval. Approval under the Design Guidelines is not a substitute for any approvals or reviews required by the City



of Mesa or any municipality, governmental agency or entity having jurisdiction over architectural or construction matters.

The Reviewer shall have sole authority to amend the Design Guidelines. Amendments to the Design Guidelines shall apply prospectively only. They shall not require modification to or removal of any Improvements previously approved. There is no limitation on the scope of amendments to the Design Guidelines, and such amendments may add or eliminate requirements previously imposed or otherwise make the Design Guidelines more or less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and their contractors upon request.

#### 9.4 Procedures.

9.4.1 Completed Application. Unless the Design Guidelines provide otherwise, no work on any Improvement may begin until an Owner submits a complete application requesting approval and such application is approved by the Reviewer. No application shall be deemed complete unless it is in writing and contains all fees and information required in the Design Guidelines for the type of activity proposed ("Complete Application"). Upon request, the Reviewer shall provide a written receipt reflecting materials submitted.

In reviewing each Complete Application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations.

The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may: (i) approve the Complete Application with or without conditions; (ii) approve a portion of the Complete Application (with or without conditions) and disapprove other portions; or (iii) disapprove the Complete Application.

The Reviewer shall notify the applicant in writing of the final determination on any Complete Application in accordance with the Design Guidelines timetable. If the Reviewer fails to respond within sixty (60) days, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall permit construction in a manner inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 9.6 below.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, unless the Reviewer (in its discretion) grants an extension in writing, the approval shall expire and the Owner must reapply for approval before commencing construction. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within two years of commencement unless otherwise specified in the notice of

approval, or unless the Reviewer (in its discretion) grants an extension in writing. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Residential Association or Residential Declarant.

The foregoing provisions of this Section 9.4.1 do not preclude Residential Declarant from imposing other more stringent construction commencement or completion requirements pursuant to a contract for the sale of a Residential Property, nor shall they preclude Residential Declarant from reserving the option to repurchase any Residential Property from an Owner if the construction does not commence or is not completed within the required time period.

9.4.2 Fees. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application.

9.4.3 Appeals Process. In the case of any review conducted by the DRC, the applicant may appeal disapproval to the Residential Board. To appeal, the applicant must submit to the Secretary of the Residential Board a copy of the original Complete Application and any supplemental materials provided by the applicant to the DRC, the notification of the disapproval of the application, and a letter requesting an appeal, all within fifteen (15) days after the notice of disapproval is given. The appeal shall also contain a response to any specific concerns or reasons for disapproval listed in the notice of disapproval. The Residential Board may: (i) affirm the DRC's decision; (ii) affirm a portion and overturn a portion of the DRC's decision; or (iii) overturn the DRC's entire decision. The Residential Board shall notify the applicant and the DRC in writing of its decision within thirty (30) days after its receipt of the appeal with all required information. If the Residential Board's decision overturns the decision of the DRC, in whole or in part, then the Residential Board's decision shall include a description of its reasons for doing so.

9.5 No Waiver of Future Approvals. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently submitted for approval.

9.6 Variances. The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance, however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall: (a) be effective unless in writing; (b) be contrary to this Residential Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances.

9.7 Limitation of Liability. This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Residential Community; it does not create any duty to any Person. Review and approval of any application pursuant to this Article may be based purely on aesthetic considerations in the sole judgment of the Reviewer. The Reviewer is not responsible for the structural integrity or soundness of approved

construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

The Residential Declarant Parties, the Residential Association, and the Board Representatives shall not be liable for: (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Residential Property or Area of Residential Responsibility. In all matters, the Residential Association shall defend and indemnify the Board Representatives as provided in Section 4.3 above.

9.8 Construction of Improvements. Construction of Improvements shall be conducted expeditiously while minimizing disruption to nearby Residential Properties. Construction of any and all Improvements must be undertaken only by contractors who are duly licensed by the State of Arizona.

The Reviewer, or its designated agents, may inspect any Improvements to determine whether such Improvements are in accordance with the approval issued by the Reviewer. If the Reviewer finds the Improvements were not performed or completed in substantial compliance with the approval granted, or that no approval was granted, then the Reviewer shall give written notice to the Board and the Owner of such non-compliance and such Owner will be required to remedy the non-compliance within thirty (30) days after such notice is given. If an Owner fails to timely remedy the non-compliance, the Reviewer may (i) remedy the non-compliance itself, including removal of any non-complying Improvements; (ii) record a notice of the non-compliance against the Owner's property; (iii) institute legal action to enforce the compliance or completion; (iv) impose a reasonable monetary fine on the relevant Owner, and record a notice of the fine against such Owner's property; or (v) pursue any other remedy against the relevant Owner that may be available at law or in equity. Any such fine and the costs of any such action shall be assessed against the Owner as a Specific Assessment and/or a Reimbursement Assessment.

Each Residential Owner shall maintain his/her Property in a neat and orderly condition during any construction on the Property and shall take all reasonable dust control measures. No garbage, trash or debris related to construction shall be placed or kept on any property, except in covered containers of a type, size and style that are approved in writing by the Reviewer. Owners shall keep adjacent roadways and other property clear of garbage, trash and debris.

9.9 Subdivision and Combination of Residential Properties. No Person other than Residential Declarant and Builders whom Residential Declarant may authorize shall subdivide or change the boundary lines of any Residential Property without the Residential Board's prior written approval. Any such action that the Residential Board approves shall be effective only upon recording of a subdivision plat or other legal instrument reflecting the subdivision or new

boundaries of the affected Residential Property(ies). Upon the recordation of the subdivision plat or other legal instrument subdividing a Residential Property, the subdivided lot or condominium units shall be treated as separate Residential Properties for purposes of voting and assessment.

No Person other than Residential Declarant and Builders whom Residential Declarant may authorize shall combine Residential Properties without the Residential Board's prior written approval. An Owner who purchases more than one Residential Property from Residential Declarant may combine the Residential Properties following the acquisition with Residential Declarant's prior written approval; however, all costs and any liability from such combination shall be the sole burden of the Owner combining the Residential Properties. Combination of Residential Properties shall be effective only upon recording of a subdivision plat or other legal instrument reflecting the combination or new boundaries of the affected Residential Properties. Once combined as above described, no combined Residential Property may be resubdivided, except in accordance with the provisions of the first paragraph of this Section 9.9.

## **ARTICLE 10**

### **DISPUTE RESOLUTION AND LIMITS ON LITIGATION**

*From time to time, disputes may arise between Owners, or between an Owner and the Residential Association, Residential Declarant, or others involved in the Residential Community. This Article commits the parties involved in any such dispute to work together in an attempt to resolve the dispute without litigation, in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Owners before the Residential Association can engage in certain types of litigation that could result in significant legal and related costs, time, and effort to the Residential Community.*

10.1 Alternative Dispute Resolution. In order to encourage the amicable resolution of Claims (as defined below), all Claims shall be resolved in accordance with the dispute resolution procedures set forth in this Article 10.

10.1.1 Covenant to Resolve Disputes. Residential Declarant, all Residential Declarant Parties, the Residential Association, and their respective directors, officers, employees, and committee members, all Persons subject to this Residential Declaration, the Manager (if any), and any Person not otherwise subject to this Residential Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of Claims without the time, effort, and financial cost of litigation. Accordingly, each Bound Party covenants and agrees not to file suit in any court with respect to a Claim (as defined below), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in this Article 10 in a good faith effort to resolve such Claim.

10.1.2 Claims. As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute, whether based on contract, statute, tort, or equity, by or among Bound Parties and arising out of or relating to (i) the interpretation, application, or enforcement of the Residential Documents, (ii) the rights, obligations, and duties of any Bound Party under the Residential Documents; or (iii) the planning, surveying, design, engineering, grading, specifications, construction or other development of the Residential Community or any Improvements, including allegations of latent or patent design or construction defects, excluding matters of aesthetic judgment under Article 9, which shall not be subject to review and shall not be subject to this Article. The term "Claim" shall not include the following unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in this Article 10:

(i) Any suit or other action by the Residential Association regarding collection of Fees or Assessments or other amounts due from any Owner;

(ii) Any Claim by the Residential Association regarding the enforcement of a completion bond for the completion of any Improvements;

(iii) Any suit by the Residential Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Residential Association's ability to enforce the provisions of this Residential Declaration; and

(iv) Any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice of Claim required by Section 10.2, unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article.

## 10.2 Dispute Resolution Procedures.

10.2.1 Notice of Claim. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice of Claim") by mail or personal delivery to each Respondent and to the Residential Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

10.2.2 Negotiation. The Claimant and Respondent 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 of Claim, the

Residential Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

10.2.3 Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice of Claim (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Residential Association (if the Residential Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Mesa/Phoenix area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

10.2.4 Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, including any confidentiality requirement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

10.3 Initiation of Litigation by Residential Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Residential Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Owners representing 75% of the total votes in the Residential Association other than Residential Declarant, except that no such approval shall be required for actions or proceedings:

- (i) initiated during Residential Declarant Control Period;
- (ii) initiated to enforce the provisions of this Residential Declaration, including collection of assessments and foreclosure of liens;

(iii) initiated to challenge ad valorem taxation or condemnation proceedings;

(iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies to the Residential Association; or

(v) to defend claims filed against the Residential Association or to assert counterclaims in proceedings instituted against it.

This Section 10.3 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

## **ARTICLE 11**

### **ANNEXATION AND WITHDRAWAL OF ADDITIONAL PROPERTY**

*Due to the need to pace development to the needs of the Residential Community and the market demand, the Residential Community will be developed in phases. Residential Declarant has limited the initial scope of this Residential Declaration to the Initial Residential Property with the intent that Residential Declarant or the Residential Association may expand the initial property submitted to the Residential Declaration as set forth in this Article.*

11.1 Annexation of Additional Property by Residential Declarant. Until the end of the Development and Sale Period, Residential Declarant shall have the unilateral right and authority (but not the obligation) from time to time and at any time, to subject additional real property (including Improvements) to the provisions of this Residential Declaration by executing and Recording a declaration of annexation (a "Declaration of Annexation"), which may be a Supplemental Residential Declaration that includes annexation provisions, pertaining to all or a portion of the real property described on Exhibit "B" attached hereto or any other land adjoining the Initial Residential Property or the real property described on Exhibit "B" attached hereto (collectively, the "Annexation Property"). Any such annexation shall be effective upon the Recording of such Declaration of Annexation, unless otherwise provided therein.

11.2 Annexation of Additional Property by the Residential Association. After the end of the Development and Sale Period, the Residential Association shall have the right and authority (but not the obligation) from time to time and at any time, to subject additional lands (and all Improvements thereon) to the provisions of this Residential Declaration by executing and Recording a Declaration of Annexation pertaining to all or a portion of the Annexation Property, provided that the owner of the relevant Annexation Property executes a Recorded consent to the Declaration of Annexation. Any such Declaration of Annexation shall be effective upon Recording unless otherwise provided therein.

11.3 Effect of Annexation; Assessments. Upon the Recording of a Declaration of Annexation, the annexed property, and the Owners thereof, shall have all of the rights, benefits and easements described in this Residential Declaration and the other Residential Documents,

and shall be subject to all of the obligations, burdens and liabilities described in this Residential Declaration and the other Residential Documents.

11.4 Withdrawal of Property. Until the end of the Development and Sale Period, Residential Declarant shall be entitled to withdraw portions of the property owned by Residential Declarant and subject to this Residential Declaration in accordance with this Article 11 from the terms and conditions of this Residential Declaration by executing and Recording a declaration of withdrawal (a "Declaration of Withdrawal"). For purposes of this Residential Declaration, the withdrawn property shall be referred to as the "Withdrawn Property". Subject to the foregoing, any such withdrawal shall not require the joinder, ratification or approval of the Residential Association, any Neighborhood Association, or any Owner, Mortgagee, lienholder or other third party. Upon the withdrawal of the Withdrawn Property from the terms and conditions of this Residential Declaration, the Withdrawn Property and its Owner shall no longer have any of the rights, benefits and easements described in this Residential Declaration or the other Residential Documents, and shall no longer be subject to any of the obligations, burdens and liabilities described in this Residential Declaration or the other Residential Documents. Notwithstanding the foregoing, if any Property that remains subject to this Residential Declaration is benefited by any easement established under this Residential Declaration over any Withdrawn Property, then such withdrawal shall not be effective unless each such easement established under this Residential Declaration is replaced with an equivalent easement established at the time of withdrawal by separate Recorded instrument.

## **ARTICLE 12**

### **RESERVED RESIDENTIAL DECLARANT RIGHTS**

*This Article reserves various rights to Residential Declarant, in addition to those specifically reserved elsewhere in the Residential Documents, in order to facilitate Residential Declarant's development and sale of property in the Residential Community, to enable Residential Declarant to respond to Owners' concerns, and to protect various property rights and other interests of Residential Declarant.*

12.1 Residential Declarant's Reserved Rights. Residential Declarant reserves the following rights with respect to the Residential Community during the Development and Sale Period:

(i) The right, but not the obligation, to install Improvements within the Areas of Residential Responsibility, and to increase, add to or expand such Improvements, and to make any additions, alterations or improvements to the Areas of Residential Responsibility as may be desired by Residential Declarant, in its sole and absolute discretion, without the consent of the Residential Association, any Association, any Owner, Mortgagee, lienholder or other third party.

(ii) The right (which may be exercised by its agents, employees, contractors, consultants and representatives) to the non-exclusive use of all of the Areas of Residential Responsibility (other than Restricted Areas of Residential Responsibility) and the Improvements therein, without charge, including ingress and egress, as necessary, for purposes of



sales, marketing, advertising, display, signs, access, construction, development and any other activities or purposes, including the right to (i) place, erect or construct portable, temporary, or accessory buildings or structures upon any portion of the Areas of Residential Responsibility (other than Restricted Areas of Residential Responsibility) or any Residential Property owned by any Residential Declarant Party for such activities or purposes; (ii) temporarily deposit, dump, or accumulate materials, trash, refuse and rubbish upon any portion of the Areas of Residential Responsibility (other than Restricted Areas of Residential Responsibility) or any Residential Property owned by any Residential Declarant Party, in connection with the development or construction of Improvements within the Community; and (iii) post, display, inscribe or affix to the exterior of any Improvement upon any portion of the Areas of Residential Responsibility (other than Restricted Areas of Residential Responsibility) or any Residential Property owned by any Residential Declarant Party signs and other materials used in developing, constructing, selling, leasing, or promoting the Community.

(iii) The right to grant such other easements over the Areas of Residential Responsibility (other than Restricted Areas of Residential Responsibility) as Residential Declarant deems appropriate.

(iv) The right to enforce the obligations of the Residential Association to properly maintain and operate any portion of the Community as required by this Residential Declaration. In the event the Residential Association defaults with respect to any of its obligations to operate or maintain any portion of the Community, Residential Declarant shall have the right to perform such work and be reimbursed for any costs and expenses incurred by Residential Declarant as a result, including the right to enforce restrictions, conditions and limitations, if any, contained within the any documents and agreements affecting the Community at the time of Recording of this Residential Declaration, as such documents may be amended, modified and/or supplemented from time to time.

(v) The right, without approval or joinder of any other Person, to (A) subdivide or re-subdivide (including by means of a condominium plat) all or any part of the Community owned by Residential Declarant or by any Owner who consents to such plat or replat, and (B) grant easements over all or any part of the Community owned by Residential Declarant or by any Owner who consents to such easement, and (C) dedicate fee title to the City or any other applicable governmental authority, including school districts and other educational bodies, with respect to all or any part of the Community owned by Residential Declarant or by any Owner who consents to such dedication.

(vi) The right to Record a Supplemental Residential Declaration over all or any part of the Community that is owned by Residential Declarant or that is owned by an Owner who consents to such instrument, which may contain such terms and provisions as Residential Declarant (and such Owner, if any) may deem appropriate. The foregoing shall include the right to Record a supplement or addendum to this Residential Declaration for the purpose of correcting errors in this Residential Declaration.

(vii) The right to Record a Declaration of Annexation or Declaration of Withdrawal, as contemplated under Article 11 above.

(viii) The right to erect, construct and maintain on any property owned or controlled by any Residential Declarant Party, or its successors or assigns, such structures as Residential Declarant may deem to be appropriate in connection with the development of the Community and dispose of the same by sale, lease or otherwise.

12.2 Residential Declarant Exemption. Anything in this Residential Declaration to the contrary notwithstanding, until the end of the Development and Sale Period, nothing herein shall be construed to prevent, limit or impair Residential Declarant's right and ability to complete development of the Community in any manner determined by Residential Declarant from time to time.

12.3 MODIFICATION OF COMMUNITY. SUBJECT TO APPLICABLE LAWS, RESIDENTIAL DECLARANT RESERVES THE ABSOLUTE RIGHT AT ANY TIME AND FROM TIME TO TIME PRIOR TO THE END OF THE DEVELOPMENT AND SALE PERIOD TO MODIFY THE PLAN FOR THE RESIDENTIAL COMMUNITY. INCLUDED IN THIS RIGHT IS THE RIGHT OF RESIDENTIAL DECLARANT OR ANY THIRD PARTY APPROVED BY RESIDENTIAL DECLARANT TO CONSTRUCT IMPROVEMENTS THAT ARE NOT CONTEMPLATED BY THIS RESIDENTIAL DECLARATION. IN THE EVENT RESIDENTIAL DECLARANT CHANGES THE TYPE, SIZE, NATURE OR TIMING OF CONSTRUCTION OF THE IMPROVEMENTS TO BE CONSTRUCTED UPON THE PROPERTY, RESIDENTIAL DECLARANT SHALL HAVE NO LIABILITY THEREAFTER TO ANY OWNER OR OCCUPANT. IN ADDITION, RESIDENTIAL DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE MANNER IN WHICH ANY OTHER LANDS OUTSIDE THE PROPERTY WILL BE DEVELOPED, AND SHALL HAVE NO LIABILITY TO ANY OWNER OR OCCUPANT REGARDING THE DEVELOPMENT OF ANY OTHER LAND IN OR AROUND THE PROPERTY.

12.4 Assignability of Residential Declarant's Rights. Any or all of the rights of Residential Declarant under this Residential Declaration may be assigned any number of times, in whole or in any part, on an exclusive or non-exclusive basis, provided that such assignment shall not enlarge the rights beyond those contained herein and provided further that no such assignment shall be effective unless it is set forth in a Recorded instrument signed by Residential Declarant. Any assignee of less than all of Residential Declarant's rights shall not be deemed Residential Declarant, nor shall it be burdened by any of Residential Declarant's obligations arising under this Residential Declaration, except as expressly and specifically assigned and assumed. Any partial assignee may exercise only such rights of Residential Declarant as are specifically assigned to it. No assignee shall have any liability for any acts of Residential Declarant or any prior Residential Declarant occurring prior to the date of assignment or transfer unless such assignee is assigned and agrees to assume such liability. Any rights of the Residential Declarant (as such) under this Residential Declaration that are not assigned on or before the end of the Development and Sale Period shall be deemed to have been permanently extinguished as of the end of the Development and Sale Period.

12.5 Additional Covenants and Restrictions. During the Development and Sale Period, no one other than Residential Declarant may record any additional covenants or restrictions or any subdivision plat or condominium plat affecting any portion of the Residential

Community without Residential Declarant's written consent, which consent must be attached to the relevant Recorded instrument. Any instrument recorded without the required consent shall be void and of no force and effect.

12.6 Exclusion of Other Properties. By accepting a deed to a Residential Property, each Owner specifically acknowledges that nothing contained in this Residential Declaration shall in any way, either expressly or by implication, restrict, limit, or otherwise affect the use or disposition by Residential Declarant or any Residential Declarant Party of any property any of them owns, whether contained within or in the vicinity of the Residential Community. Residential Declarant and all Residential Declarant Parties shall have full, free, and unrestricted use of their other lands, notwithstanding any incompatibility of such use with restrictions this Residential Declaration imposes upon the Residential Properties.

12.7 Amendment. This Article 12 may not be amended without the express written consent of Residential Declarant.

### **ARTICLE 13** **MORTGAGEE RIGHTS**

13.1 Invalidity. No breach of any covenant and/or restriction, nor the enforcement of any lien provision contained in this Residential Declaration, shall render invalid the lien of any Mortgage made in good faith and for value. Any Mortgagee or other purchaser who obtains title to a Property pursuant to the remedies provided in the Mortgage (including foreclosure of the Mortgage, trustee sale or acceptance of deed in lieu thereof) shall take the property free of any claims for unpaid Assessments or Fees or other charges under this Residential Declaration which became due and payable prior to the date such Mortgagee or other purchaser acquired title. No such sale or transfer shall relieve the Property from any Assessments, Fees or other charges thereafter becoming due or from the lien of any subsequent levy of an Assessment, Fee or other charge.

13.2 Payment. Mortgagees may jointly or singly pay any Fee, Assessment or other charge which is in default and take any action reasonably necessary to cure any other default under this Residential Declaration by the Owner who is subject to the Mortgage with the same effect as such cure by the Owner itself.

13.3 Assignment of Voting Rights. Any Owner may assign all, but not less than all, of its voting rights under this Residential Declaration to its First Mortgagee as security for the obligations secured by such First Mortgage. Prior to actual receipt by the Residential Association of notice from the First Mortgagee of such First Mortgagee's right to exercise the voting rights appurtenant to any Property, the Residential Association shall be entitled to rely, without further inquiry, on the oral or written statement of any Owner that such Owner is entitled to exercise the voting rights appurtenant to such Owner's Property. Upon receipt of notice from a First Mortgagee, the Residential Association shall be entitled to rely on the First Mortgagee's right to exercise the voting rights appurtenant to such Property, notwithstanding contrary instructions from the Owner of such Property.

13.4 Miscellaneous Rights of First Mortgagee. Each First Mortgagee whose name and address has been furnished to the Residential Association, whether by an Owner or by such First Mortgagee, shall have the right to:

(i) receive notice of all meetings of the Owners and of the Board upon written request to the Residential Association;

(ii) be present at any meetings of the Residential Association or the Board and participate therein by calling to the attention of the Residential Association and/or the Board violations of this Residential Declaration and by referring to other matters affecting the interests of the First Mortgagee;

(iii) furnish information to the Board concerning the status of any First Mortgage affecting any Property;

(iv) receive copies of any or all of the financial statements concerning the Property subject to the First Mortgage sent to the Owner at the same time and in the same manner as the Owner, upon written request to the Residential Association; and

(v) participate in negotiations regarding the value and extent of any loss affecting a Property subject to such First Mortgagee's Mortgage (i) under a policy of insurance carried by the Residential Association, or (ii) in any proceedings incident to any condemnation affecting such Property.

13.5 Copies of Documents. The Residential Association shall make available to Owners and Mortgagees who request such items in writing, current copies of the Community Documents and the books, records and financial statements of the Residential Association and operational records of the Residential Community. "Available", as used in this Section 13.5, shall mean available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

13.6 Notice of Action. Upon written request to the Residential Association, identifying the name and address of the First Mortgagee, and the number or address of the applicable Property, such First Mortgagee will be entitled to timely notice of:

(i) any condemnation loss or any casualty loss which affects a material portion of the Residential Community or the Property on which there is a First Mortgage held by such First Mortgagee;

(ii) any notice of default given by the Residential Association to the Owner of the Property subject to a First Mortgage, which notice shall be delivered to the First Mortgagee concurrently with delivery of the default notice to the applicable Owner, and in such case the Residential Association will accept any First Mortgagee cure of such default or delinquency; and

(iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Residential Association.

13.6.2 Discharge. The Residential Association shall discharge its obligation to notify First Mortgagees by sending notice required herein to such parties, at the address given on the current request for notice, in the manner prescribed by Section 14.6 below.

## **ARTICLE 14**

### **GENERAL PROVISIONS**

14.1 Enforcement. The Residential Board and the Residential Declarant exclusively (and not any Neighborhood Association or any individual Owner, Permittee or Occupant) shall have the right to enforce the provisions of this Residential Declaration. In connection with such enforcement, the Residential Board or the Residential Declarant (as applicable) shall be entitled to recover court costs and reasonable attorneys' fees as ordered by the court or other adjudicating body. Failure by the Board or the Residential Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a default or a waiver of the right to do so thereafter. Notwithstanding the foregoing, (i) any Residential Owner may petition the Residential Board in writing requesting enforcement by the Board of an asserted violation of any provision of this Residential Declaration, (ii) upon receipt of such petition, the Board shall schedule a special meeting regarding the subject of the petition, and provide notice of the special meeting to all affected Residential Owners in accordance with the Bylaws, (iii) after such special meeting, the Board shall determine, in its discretion, exercising its reasonable business judgment, whether and how to pursue the subject matter of the petition, and (iv) the Board, in its discretion, may permit the petitioning Owner to pursue enforcement of the matter, at the sole expense of such Owner, and may assign to the Owner such rights of the Residential Association as the Board may deem appropriate to permit such enforcement. The determination of the Board as to how to proceed with the subject matter of the petition shall be final and binding on all Residential Owners.

14.2 Binding; Run With Land. The provisions of this Residential Declaration shall constitute covenants running with the land and equitable servitudes, shall run with and bind the Residential Community and all interests therein, including, without limitation, the fee interest and any leasehold interests, and shall inure to the benefit of and shall be binding upon the Residential Owners, and each holder of any interest in any Residential Property, and their grantees, Mortgagees, heirs, successors, assigns and personal representatives, with the same full force and effect as though set forth in full in every grant, conveyance or demise of the Residential Community, or any part thereof. All Residential Owners and Occupants are subject to and bound by the provisions of this Residential Declaration (including without limitation any Residential Owner whose title is obtained through foreclosure, trustee sale, deed in lieu thereof, or other similar means). Residential Owners shall require their Permittees, Occupants and Occupant's Permittees to observe all applicable provisions of this Residential Declaration.

14.3 Invalidity of any Provision. If any provision of this Residential Declaration is declared by a court of competent jurisdiction to be invalid or in conflict with any Applicable Law, the validity of all other provisions of this Residential Declaration shall remain unaffected and shall continue in full force and effect.

14.4 Term. This Residential Declaration shall remain in effect for a term of fifty (50) years from the date this Residential Declaration is Recorded, after which it automatically shall be extended for successive periods of ten (10) years, unless a written instrument terminating this Residential Declaration and signed by Residential Owners having not less than seventy-five percent (75%) of the Owner Memberships and by such Owners' First Mortgagees, and has been Recorded within the year preceding the end of the initial term or any extended term of this Residential Declaration.

14.5 Amendments. This Residential Declaration may be amended only by a written, Recorded instrument that has been approved in writing by no less than sixty-seven percent (67%) of the Owner Memberships; provided, however that until the end of the Development and Sale Period, no such amendment shall be valid until and unless such amendment is also consented to and executed by the Residential Declarant, and no amendment may increase or decrease the proportionate voting rights or Assessment obligations of any Owner relative to other Owners. Any amendment of this Residential Declaration shall contain a certification in writing executed and acknowledged by an officer of the Residential Association that the required written approvals set forth in this Section 14.5 have been obtained. Notwithstanding the foregoing, or any other provision of this Residential Declaration, Residential Declarant may unilaterally amend this Residential Declaration in any manner that has no material adverse impact on any Owner.

14.6 Notices. Any notice permitted or required by this Residential Declaration, (a) shall be made in writing, (b) shall be delivered by courier, by a nationally recognized overnight delivery service, or by prepaid certified or registered mail, and (c) shall be addressed to the Person to be notified (i) in the case of an Owner, Occupant or First Mortgagee, at the current address given by such Person to the Secretary of the Residential Association, (ii) in the case of the Residential Association, at the on-site office of the Residential Association, if any, or at the principal place of business of the Residential Association. If delivery is by courier or by nationally recognized overnight delivery service, the notice shall be deemed to have been given when the delivery is made; if delivery is by mail, the notice shall be deemed to have been three (3) business days after it has been deposited in the United States mail.

14.7 Not a Public Dedication. Nothing contained in this Residential Declaration shall be deemed to be a gift or dedication of any portion of the Residential Community to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Owners and the Residential Association that this Residential Declaration shall be strictly limited to and for the purposes herein expressed, for the solely for the benefit of Residential Declarant, the Residential Association and the Owners. Pursuant to the provisions of this Section 14.7, and except as otherwise expressly stated in this Residential Declaration, the Residential Association shall have the right to restrict public access as reasonably necessary to prevent public dedication and to prevent or prohibit the use of the Residential Community, or any portion thereof, by any Person, for any purpose contrary to the operation of the Residential Community as a first class private development as contemplated by this Residential Declaration.

14.8 Estoppel Certificate. The Residential Association, upon not less than ten (10) days' prior notice from any Owner, shall execute, acknowledge and deliver to such Owner and to

any prospective purchaser, tenant or Mortgagee of such Owner, a certificate of the Residential Association stating (a) whether its records reflect that there are then existing defaults by the Owner in the payment or performance of its obligations under this Residential Declaration (and, if so, specifying same), (b) that this Residential Declaration is unmodified and in full force and effect (or, if there have been modifications, that this Residential Declaration is in full force and effect as modified and stating the modifications), (c) the dates to which Fees, Assessments and other charges under this Residential Declaration have been paid by such Owner and the amounts of the most recently charged Fees, Assessments and other charges, and (d) any other information that may reasonably be required by such Persons. It is intended that any such certificate delivered pursuant to this section may be relied upon by the requesting Owner, or any prospective purchaser, Occupant or Mortgagee designated by the requesting Owner.

14.9 Governing Law; Venue. This Residential Declaration shall be governed by, construed under, and enforced in accordance with the laws of the State of Arizona, without regard to conflicts of law principles. All Owners consent to the jurisdiction of the courts of the State of Arizona and the United States of America, and agree that venue property lies in the Superior Court of Maricopa County and the United States District Court for the District of Arizona, as appropriate.

14.10 Joint and Several Liability. When the Owner of a Property is composed of more than one Person, each such Person shall be jointly and severally liable for payment of Fees and Assessments, and performance of all obligations (including without limitation, indemnification obligations) arising under any provision of this Residential Declaration.

14.11 Cooperation. In fulfilling obligations and exercising rights under this Residential Declaration, each Owner shall cooperate with each other and the Residential Association to promote the efficient operation of the Community and harmonious relationships among the Owners and to protect the value of each of their respective interests in the Community. To that end, except for information which an Owner reasonably deems to be confidential, or which may be the subject of litigation, or which may be prohibited from disclosure by court order, each Owner shall share information reasonably requested by the Residential Association or any other Owner relating to matters that are the subject of this Residential Declaration.

14.12 Reasonable Consents. Except as expressly set forth in this Residential Declaration, all consents and approvals of any of the Owners and of any holders of Mortgages shall not be unreasonably withheld or delayed. Any disapproval of or refusal to consent to any matter hereunder shall be in writing and shall state in reasonable detail the reason or reasons for such disapproval or refusal to consent.

14.13 Attorneys' Fees. Subject to Article 10 above, if there is any legal action or proceeding to enforce any provision of this Residential Declaration or to protect or establish any right or remedy, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by such prevailing party in enforcing or appealing any judgment rendered in any such legal action or proceeding, which costs and expenses shall be recoverable separately from and in

addition to any other amount included in such judgment. This Section 14.13 is intended to and shall survive and not be merged into any such judgment.

14.14 Construction. The provisions of this Residential Declaration shall be interpreted and construed to the end that the Residential Community shall remain a first class Residential Use development.

14.15 Conforming Exhibits. The exhibits attached to this Residential Declaration are incorporated herein by this reference.

14.16 Priority of Documents. In the absence of any express language indicating which document controls on a particular subject matter, this Residential Declaration shall be paramount in those instances of conflict or inconsistency among or between it and the other Residential Documents.

14.17 Captions. The captions in this Residential Declaration are for convenience and reference only and in no way define, limit, or otherwise affect the scope, meaning or effect of any provision of this Residential Declaration. All references to "herein" or "hereunder" refer to this Residential Declaration as a whole unless specific references are made to specific articles, sections, subsections or exhibits of this Residential Declaration.

14.18 No Joint Venture or Partnership. Nothing contained in this Residential Declaration shall be construed to create any partnership, joint venture or principal-agent relationship between any Persons subject to this Residential Declaration, including, but not limited to, Residential Declarant.

14.19 Name. The name of the Community, the Residential Community, shall not be changed without the prior written consent of Residential Declarant.

14.20 Number; Gender. The singular and plural number and the masculine, feminine and neuter gender shall each include the other where the context requires.

**IN WITNESS WHEREOF**, the undersigned, being the Residential Declarant, has executed this Residential Declaration this 6<sup>th</sup> day of February, 2013.

DMB Mesa Proving Grounds LLC, an Arizona limited liability company

By: DMB Associates, Inc., an Arizona corporation, its Manager

By: Mary S. Alexander  
Its: Executive Vice President

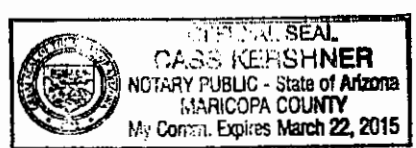


STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of February, 2013, by Mary S. Alexander, the Executive Vice President of DMB Associates, Inc., an Arizona corporation, in its capacity as Manager of DMB Mesa Proving Grounds LLC, an Arizona limited liability company, on behalf thereof.

Cass Kershner  
Notary Public

My Commission Expires:



## Exhibit "A"

### Legal Description of Initial Residential Property

Lots 1 through 84, inclusive, and Tracts "A" and "B", Eastmark DU-7S Parcel 7-1, according to the subdivision plat recorded in Book 1117 of Maps, Page 48, official records of Maricopa County, Arizona.

Lots 1 through 79, inclusive, and Tracts "A" and "B", Eastmark DU-7S Parcel 7-2, according to the subdivision plat recorded in Book 1117 of Maps, Page 49, official records of Maricopa County, Arizona.

Lots 1 through 21, inclusive, and 27 through 63, inclusive, and Tracts "A", "B" and "C", Eastmark DU-7S Parcel 7-3A, according to the subdivision plat recorded in Book 1117 of Maps, Page 50, official records of Maricopa County, Arizona.

Lots 1 through 47, inclusive, Eastmark DU-7S Parcel 7-3B, according to the subdivision plat recorded in Book 1118 of Maps, Page 1, official records of Maricopa County, Arizona, and Lots 22 through 26, inclusive, and Tracts "A", "B" and "C", Eastmark DU-7S Parcel 7-3A, according to the subdivision plat recorded in Book 1117 of Maps, Page 50, official records of Maricopa County, Arizona.

Lots 4 through 43, inclusive, and Tracts "A" and "B", Eastmark DU-7S Parcel 7-4A, according to the subdivision plat recorded in Book 1118 of Maps, Page 2, official records of Maricopa County, Arizona.

Lots 1 through 41, inclusive, and Tract "A", Eastmark DU-7S Parcel 7-4B, according to the subdivision plat recorded in Book 1118 of Maps, Page 3, official records of Maricopa County, Arizona, and Lots 1 through 3, inclusive, Eastmark DU-7S Parcel 7-4A, according to the subdivision plat recorded in Book 1118 of Maps, Page 2, official records of Maricopa County, Arizona.

Lots 1 through 85, inclusive, and Tracts "A", "B" and "C", Eastmark DU-7S Parcel 7-18, according to the subdivision plat recorded in Book 1118 of Maps, Page 5, official records of Maricopa County, Arizona.

Lots 1 through 103, inclusive, and Tracts "A" through "F", inclusive, Eastmark DU-7S Parcel 7-19, according to the subdivision plat recorded in Book 1118 of Maps, Page 6, official records of Maricopa County, Arizona.

Lots 1 through 80, inclusive, and Tracts "A", "B" and "C", Eastmark DU-7S Parcel 7-20, according to the subdivision plat recorded in Book 1118 of Maps, Page 7, official records of Maricopa County, Arizona.

Lots 1 through 84, inclusive, and Tracts "A", "B", "C" and "D", Eastmark DU-7S Parcel 7-21, according to the subdivision plat recorded in Book 1118 of Maps, Page 8, official records of Maricopa County, Arizona.

**Exhibit "B"**

**Legal Description of Annexation Property**

**NORTH PARCEL**

That portion of Sections 14, 15, 22 and 23, Township 1 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at a found Maricopa County brass cap accepted as Northeast corner of said Section 14 from which a found Maricopa County brass cap accepted as the East quarter corner of said section bears South 00 degrees 38 minutes 25 seconds East a distance of 2635.10 feet;

Thence along the east line of the Northeast quarter of said Section 14, South 00 degrees 38 minutes 25 seconds East a distance of 65.01 feet to the south right-of-way of Elliot Road, also being the POINT OF BEGINNING;

Thence continuing along said east line, South 00 degrees 38 minutes 25 seconds East a distance of 2570.09 feet to the aforementioned East quarter corner of Section 14;

Thence South 00 degrees 37 minutes 54 seconds East a distance of 2640.30 feet to the Southeast corner of said Section 14;

Thence South 00 degrees 50 minutes 12 seconds East a distance of 2628.60 feet to the East quarter corner of said Section 23;

Thence along the east line of the Southeast quarter of said Section 23, South 00 degrees 43 minutes 06 seconds East a distance of 2597.38 feet to a point lying 40.00 feet north of the south line of said Southeast quarter of Section 23;

Thence parallel to and 40.00 feet north of said south line, North 89 degrees 37 minutes 09 seconds West a distance of 2665.72 feet to the north-south midsection line of said Section 23;

Thence parallel to and 40.00 feet north of the south line of the Southwest quarter of said Section 23, North 89 degrees 38 minutes 32 seconds West a distance of 2664.90 feet to the east line of the Southeast quarter of said Section 22;

Thence North 89 degrees 36 minutes 15 seconds West a distance of 2657.73 feet to a found brass cap stamped "General Motors Corp. Property Line Survey 1951";

Thence North 89 degrees 38 minutes 29 seconds West a distance of 2597.07 feet to the easterly right-of-way of Ellsworth Road lying 50.00 feet east of the west line of the Southwest quarter of said Section 22;

Thence along said easterly right-of-way North 00 degrees 16 minutes 01 seconds West a distance of 25.00 feet;

Thence South 89 degrees 38 minutes 39 seconds East a distance of 5.00 feet;

Thence continuing along said easterly right-of-way, parallel to and 55.00 east of said west line, North 00 degrees 16 minutes 01 seconds West a distance of 2570.57 feet to the north line of said Southwest quarter of Section 22;

Thence continuing along said easterly right-of-way, parallel to and 55.00 east of the west line of the Northwest quarter of said Section 22, North 00 degrees 14 minutes 39 seconds West a distance of 325.26 feet;

Thence North 89 degrees 38 minutes 46 seconds West a distance of 5.00 feet;

Thence continuing along said easterly right-of-way, parallel to and 50.00 feet east of said west line of the Northwest quarter of Section 22, North 00 degrees 14 minutes 39 seconds West a distance of 2309.56 feet to the south line of the Southwest quarter of said Section 15;

Thence continuing along said easterly right-of-way, parallel to and 50.00 east of the west line of said Southwest quarter of Section 15, North 00 degrees 42 minutes 18 seconds West a distance of 2637.84 feet to the south line of the Northwest quarter of said Section 15;

Thence continuing along said easterly right-of-way, parallel to and 50.00 feet east of the west line of said Northwest quarter of Section 15, North 00 degrees 34 minutes 52 seconds West a distance of 1178.56 feet;

Thence continuing along said easterly right-of-way, North 57 degrees 48 minutes 28 seconds East a distance of 17.61 feet;

Thence continuing along said easterly right-of-way, parallel to and 65.00 feet east of said west line of the Northwest quarter of Section 15, North 00 degrees 34 minutes 52 seconds West a distance of 870.51 feet;

Thence North 89 degrees 25 minutes 08 seconds East a distance of 10.00 feet;

Thence continuing along said easterly right-of-way, parallel to and 75.00 feet east of said west line of the Northwest quarter of Section 15, North 00 degrees 34 minutes 52 seconds West a distance of 484.74 feet;

Thence transitioning from said easterly right-of-way to the aforementioned south right-of way of Elliot Road, North 44 degrees 53 minutes 53 seconds East a distance of 21.04 feet;

Thence along said south right-of-way, parallel to and 65.00 feet south of the north line of said Northwest quarter of Section 15, South 89 degrees 37 minutes 23 seconds East a distance of 2549.15 feet to the west line of the Northeast quarter of said Section 15;

Thence continuing along said south right-of-way, parallel to and 65.00 feet south of the north line of said Northeast quarter of Section 15, South 89 degrees 37 minutes 50 seconds East a distance of 2628.99 feet to the west line of the Northwest quarter of said Section 14;

Thence continuing along said south right-of-way, parallel to and 65.00 feet south of the north line of said Northwest quarter of Section 14, South 89 degrees 40 minutes 56 seconds East a distance of 2658.70 feet to the west line of the aforementioned Northeast quarter of Section 14;

Thence continuing along said south right-of-way, parallel to and 65.00 feet south of the north line of said Northeast quarter of Section 14, South 89 degrees 45 minutes 49 seconds East a distance of 2661.48 feet to the POINT OF BEGINNING.

### **SOUTH PARCEL**

Those portions of Section 26 and the North half of Section 27, Township 1 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at a found brass cap in a hand hole accepted as the Northwest corner of said Section 27 from which a found Maricopa County aluminum cap accepted as the North quarter corner of said section bears South 89 degrees 38 minutes 39 seconds East a distance of 2647.06 feet;

Thence along the north line of the Northwest quarter of said Section 27, South 89 degrees 38 minutes 39 seconds East a distance of 876.79 feet to the POINT OF BEGINNING;

Thence continuing along said north line South 89 degrees 38 minutes 39 seconds East a distance of 1770.27 feet to the aforementioned North quarter corner;

Thence South 89 degrees 36 minutes 05 seconds East a distance of 2658.25 feet to the Northeast corner of said Section 27;

Thence South 89 degrees 38 minutes 32 seconds East a distance of 2664.69 feet to the North quarter corner of said Section 26;

Thence South 89 degrees 37 minutes 09 seconds East a distance of 2665.74 feet to the Northeast corner of said Section 26;

Thence South 00 degrees 43 minutes 41 seconds East a distance of 2644.00 feet to the East quarter corner of said Section 26;

Thence along the east line of the Southeast quarter of said Section 26, South 00 degrees 25 minutes 05 seconds East a distance of 2591.93 feet to a point lying 33.00 feet north of the south line of said Southeast quarter of Section 26;

Thence parallel to and 33.00 feet north of said south line, North 89 degrees 33 minutes 33 seconds West a distance of 1325.50 feet;

Thence South 00 degrees 34 minutes 38 seconds East a distance of 33.01 feet to said south line of the Southeast quarter of Section 26;

Thence along said south line North 89 degrees 33 minutes 33 seconds West a distance of 1325.41 feet to the South quarter corner of said Section 26;

Thence along the south line of the Southwest quarter of said Section 26, North 89 degrees 38 minutes 16 seconds West a distance of 1119.53 feet;

Thence departing said south line of the Southwest quarter, North 00 degrees 28 minutes 35 seconds East a distance of 2730.93 feet;

Thence North 89 degrees 13 minutes 28 seconds West a distance of 1323.80 feet;

Thence North 00 degrees 23 minutes 47 seconds East a distance of 1531.79 feet;

Thence North 89 degrees 29 minutes 22 seconds West a distance of 3464.99 feet;

Thence North 52 degrees 18 minutes 30 seconds West a distance of 1625.15 feet to the POINT OF BEGINNING.

#### **ELLIOT ROAD PARCEL**

Those portions of Sections 14 and 15, Township 1 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

The north 33.00 feet of said Section 14; and

The north 33.00 feet of said Section 15;

EXCEPT the west 50.00 feet of said Section 15.

**EXCLUDING THEREFROM** the following real property:

The "Initial Residential Property" legally described in Exhibit "A" above.

The real property conveyed pursuant to the deeds recorded as Document Nos. 2011 587859 and 2012 1054162, official records of Maricopa County, Arizona.

## Exhibit "C"

### Required Insurance Coverage

The Residential Association shall obtain and maintain the following insurance coverages:

1. Property Insurance – Areas of Residential Responsibility. Property insurance providing reasonable coverage for the costs of repair, rebuilding and replacing all Improvements and personal property owned by the Residential Association (and no other Improvements or personal property), subject to the following:

a. Such property insurance policy or policies shall be written on Insurance Services Office Form CP 10 30 0402 / Causes of Loss – Special Form or its equivalent;

b. The amount of coverage for such property insurance shall be in the full amount of the full replacement value (without deduction for depreciation) of the Improvements;

c. Such property insurance shall include coverage or endorsements for increased construction costs due to changes in building codes, regulations and similar laws and for demolition costs;

d. Such property insurance may contain reasonable deductibles approved by the Board; and

e. Whenever any Improvements or alterations that are owned or operated by the Residential Association are in the course of construction, the property insurance required under this subsection for such Improvements or alterations shall be carried by the Residential Association in builder's risk form written on a completed value basis, insuring against loss to the full extent of the replacement cost of that which is being covered.

The Residential Association may, but shall not be required to, carry (i) earthquake insurance; (ii) pollution liability insurance; (iii) flood insurance; or (iv) terrorism insurance.

2. Liability Coverage - Residential Association. The Residential Association shall obtain and maintain a policy or policies of primary commercial general liability insurance on Insurance Services Office Form CG 00 01 10 01 / Commercial General Liability Coverage form or its equivalent covering claims for bodily injury, death and property damage occurring on, in or about the Areas of Residential Responsibility, with limits of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 products and completed operations aggregate, and \$2,000,000 general aggregate during one policy year. Such commercial general liability insurance shall name Residential Declarant (until the end of the Development and Sale Period), the Board, and the Owners (as a class), as additional insureds. No such liability insurance shall be deemed to limit any Person's indemnity obligations or any other obligation of any Person under this Residential Declaration. Such insurance shall include a cross-liability or severability of interest provision insuring each insured against liability to each other insured.

a. Excess Liability Coverage. An umbrella or following form excess liability insurance policy with limits of at least \$4,000,000 each occurrence and aggregate. This policy shall provide excess coverage over the general liability, automobile liability and employer's liability insurance required elsewhere in this section.

b. Workers' Compensation and Employer's Liability Insurance. Workers compensation and employer's liability insurance for employees of the Residential Association to the extent required by law. The Residential Association shall obtain a Certificate of Insurance regarding current valid workers' compensation insurance from any independent contractor who performs any service for the Residential Association, if practicable.

c. Fidelity Bonds or Insurance. Fidelity bonds, employee dishonesty insurance, or commercial crime insurance including employee dishonesty insurance. Such insurance shall define non-compensated directors, officers, committee members, and volunteers as employees for purposes of coverage. Such insurance shall cover all Board Representatives that have access to any Residential Association funds. If the Residential Association hires a management company, the theft of Residential Association assets by any representative of the management company shall be covered for the benefit of the Residential Association.

d. Directors and Officers Liability Insurance. Directors and Officers liability insurance for officers, directors, committee members, and volunteers of the Residential Association. There may be no exclusion(s) pertaining to acts of the Residential Declarant's representatives who may be serving as directors and/or officers of the Residential Association.

3. Business Automobile Liability. Business automobile liability insurance, insuring against liability arising from the maintenance and use of all owned, non-owned, hired, leased and rented trucks, automobiles and other vehicles for bodily injury, death or property damage. The coverage shall have a combined single limit for each occurrence and an annual aggregate limit of not less than One Million Dollars (\$1,000,000). The required umbrella or form following excess limits outlined in Section 2(a) above or other excess/umbrella coverage of One Million Dollars (\$1,000,000) shall be secured to provide coverage over this primary business automobile liability insurance.

4. Other Insurance. Such other insurance as the Board, in its discretion, considers necessary or advisable.

5. Community Insurance Administration.

a. Each Owner will be deemed to have appointed the Residential Association or any insurance trustee designated by the Residential Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Residential Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

b. If reasonably available, all insurance maintained by the Residential Association shall contain a waiver of any rights the insurer may have to subrogate against the



Residential Association, the Board Representatives, the Owners, the Occupants, and all First Mortgagees.

c. The Residential Association and each Board Representative shall have no liability to any Owner or Mortgagee if, using good faith efforts, it is unable to obtain the insurance required hereunder because the insurance is no longer available at commercially reasonable rates or terms. In any such event, the Board shall notify each Owner and any Mortgagee entitled to notice that the insurance will not be obtained or renewed.

d. No Owner shall separately insure the Improvements on or within a Property against loss by fire or other casualty covered by any insurance carried by the Residential Association in a manner that will result in any diminution in insurance proceeds otherwise payable under the Residential Association's policies. The Residential Association shall allow Owners to review a copy of the Residential Association's policy to enable Owners to insure their Property without duplicating insurance carried by the Residential Association and inadvertently triggering any co-insurance clause in the Residential Association's policy. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Residential Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance in violation of this provision.

6. General Requirements. All of the foregoing insurance policies shall be issued by responsible companies licensed in the State of Arizona. All such companies shall have an A.M. Best Company Rating of not less than A- VIII or an equivalent rating if A.M. Best ceases to exist or provide a rating.

## Exhibit "D"

### Initial Residential Standards

The following shall apply to the Residential Community until such time as they are modified pursuant to the Residential Declaration.

1. **Restricted Activities.** Unless the Residential Board expressly authorizes, and then subject to such conditions as it may impose, the following activities are prohibited within the Residential Community:

(a) Unless otherwise allowed by law, parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages, or parking of any vehicles in a manner that results in use or access to any sidewalk being impaired; provided, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Residential Property or the Area of Residential Responsibility, and such vehicles, equipment, and other items may be parked in a driveway for a period not to exceed 24 hours as reasonably necessary to allow it to be washed and cleaned;

(b) Raising, breeding, or keeping animals except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Residential Property. However, those pets which are permitted to roam free, or, in the Residential Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Residential Properties shall be removed upon the Residential Board's request. If the pet owner fails to honor such request, the Residential Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Residential Board whenever outside the dwelling. Any person bringing a pet outside its Residential Property shall immediately remove any feces deposited on any portion of Verrado by the pet. The Residential Board may restrict the portions of the Area of Residential Responsibility on which pets are permitted. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity that emits foul or obnoxious odors outside the Residential Property or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Residential Properties;

(d) Any activity that violates local, state, or federal laws or regulations; however, the Residential Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Residential Property;

(f) Any noxious or offensive activity which in the reasonable determination of the Residential Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Area of Residential Responsibility or to the occupants of other Residential Properties;

- (g) Outside burning of trash, leaves, debris, or other materials;
- (h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Residential Properties, except alarm devices used exclusively for security purposes;
- (i) Use and discharge of firecrackers and other fireworks;
- (j) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;
- (k) Discharge of firearms; provided, the Residential Board shall have no obligation to take action to prevent or stop such discharge;
- (l) On-site storage of fuel, except that a reasonable amount of fuel may be stored on each Residential Property for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article 9;
- (m) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Residential Community or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;
- (n) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Residential Property without prior approval pursuant to Article 9;
- (o) Any installation on the outside portions of the Residential Property, whether such portion is improved or unimproved of satellite dishes and antennas, except that:
- (i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;
  - (ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services that is one meter or less in diameter or diagonal measurement; or
  - (iii) an antenna that is designed to receive television broadcast signals; shall be permitted on Residential Properties, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, to minimize obtrusiveness as viewed from streets and adjacent property. Founder and/or the Association shall have the right, without obligation, to erect one or more aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Residential Community, should any master system or systems be utilized by the Association and require such exterior apparatus.

(p) Signs that are not owned or maintained by the Association, Assembly, Town, or any other applicable governmental agencies (including, but not limited to, commercial, political and similar signs) shall not be erected or maintained on any Residential Property except:

(i) Signs required by legal proceedings.

(ii) Identification signs for individual residences approved in compliance with the provisions of Article 9 of the Residential Declaration;

(iii) No more than one for sale or for lease sign and no more than one open house sign, the nature, location, size, color, design, message content, and type of which must be consistent with Arizona law and with industry standards for commercially produced signs or otherwise in compliance with the Design Guidelines, and may be placed only on the Residential Property to which such sign pertains; and

(iii) Promotional and advertising signs of builders on any Residential Property, approved in compliance with the provisions of Article 9 of the Residential Declaration.

2. **Prohibited Conditions.** The following are prohibited at the Residential Community:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Residential Community; and

(b) Structures, equipment, or other items on the exterior portions of a Residential Property which have become rusty, dilapidated, or otherwise fallen into disrepair.