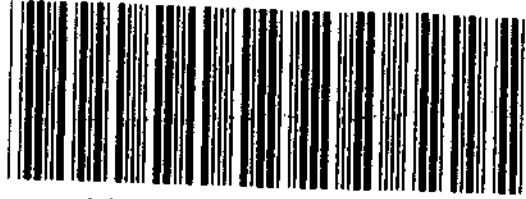


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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE RETREAT AT GRAYHAWK

"Any provision herein which  
restricts the sale, rental, or  
use of the described real  
property because of familial  
status is invalid and  
unenforceable under federal  
law"

ARROCEAF

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
THE RETREAT AT GRAYHAWK**

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

## THE RETREAT AT GRAYHAWK

This Declaration of Covenants, Conditions, and Restrictions for The Retreat at Grayhawk is made this 18 day of October, 1995, by GRAYHAWK RESIDENTIAL, INC., an Arizona corporation.

Declarant hereby adopts this Declaration as part of a general plan to protect and enhance the value and desirability of all property now or hereafter subjected hereto. This Declaration shall be deemed a "Village Declaration," and the association identified in Section 1.51 shall be deemed a "Village Association," as those terms are used in the Master Declaration, and shall be governed by and subject to such Master Declaration.

### ARTICLE 1

#### DEFINITIONS

1.1 "Additional Property" means: (a) the real property, together with all Improvements located thereon, described on Exhibit B; and (b) any other real property, together with the Improvements located thereon, located not more than two miles from property described on Exhibit A or Exhibit B.

1.2 "Annual Assessments" means the Assessments levied pursuant to Section 5.2.

1.3 "Assessable Property" means each Lot or Parcel, except for Exempt Property.

1.4 "Assessment" means an Annual Assessment, Parcel Assessment or Special Assessment.

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

1.6 "Assessment Period" means the period set forth in Section 5.6.

1.7 "Condominium Development" means a residential condominium established in accordance with applicable Arizona law.

1.8 "Condominium Unit" means a "unit" (together with any appurtenant interest in all "common elements") within a Condominium Development (as such quoted terms are defined in the Arizona Condominium Act, Chapter 9 of Title 33 of the Arizona Revised Statutes, as amended, or any successor statutes, as amended).

1.9 "Declarant" means Grayhawk Residential, Inc., an Arizona corporation, its successors and any Person to whom it may expressly assign any or all of its rights under this Declaration.

1.10 "Declarant Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which

the Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.11 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

1.12 "Developer" means any Person (other than the Declarant) who is in the business of developing, selling or leasing real property and who acquires one or more Lots or Parcels in connection with, and in the course of, such business, for the purpose of developing, selling or leasing such Lots or Parcels.

1.13 "Development Plan" means the Development Plan for the Village and other property adopted by the Declarant, as amended by the Declarant from time to time.

1.14 "Exempt Property" means: (a) all land and improvements owned by, or dedicated to and accepted by, the United States, the State of Arizona, Maricopa County or the City of Scottsdale, or any political subdivision of any of them, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective; (b) all Village Association Land; (c) all Neighborhood Common Area and all Master Common Area; (d) all real property which is part of the common elements of a Condominium Development; and (e) any portions of a Non-Residential Parcel designated as Exempt Property in the Tract Declaration Recorded with respect to that Parcel pursuant to Article 12 of the Master Declaration.

1.15 "First Mortgage" means a Mortgage Recorded against a Lot or Parcel which has priority over all other Mortgages Recorded against that Lot or Parcel.

1.16 "Improvement" means: (a) any Residential Unit, building, fence or wall; (b) any swimming pool, tennis court, basketball court, road, driveway, parking area or satellite dish; (c) any trees, plants, shrubs, grass or other landscaping improvements of every type and kind; (d) any statuary, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot or Parcel); and (e) any other structure of any kind or nature.

1.17 "Land Use Classification" means the classification established by a Tract Declaration which designates the type of Improvements which may be constructed on a Lot or Parcel and the purposes for which such Lot or Parcel, and the Improvements situated thereon, may be utilized.

1.18 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot or Parcel (or part thereof), including an assignee of the lessee's or tenant's interest under a lease.

1.19 "Lot" means: (a) a portion of the Village intended for independent ownership and residential use and designated as a lot on any Neighborhood Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot; or (b) a Condominium Unit.

1.20 "Master Association" means Grayhawk Community Association, an Arizona non-profit corporation, and its successors and assigns.

1.21 "Master Common Area" means "Common Area," as that term is defined in the Master Declaration.

1.22 "Master Declaration" means the Declaration of Covenants, Conditions and Restrictions for Grayhawk dated May 25, 1995, Recorded May 26, 1995 at Recorder's No. 95-0300516, and re-Recorded June 2, 1995, at Recorder's No. 95-0317218; as amended from time to time.

1.23 "Maximum Membership Assessment" shall have the meaning given such term in Section 5.3.1(b).

1.24 "Member" means any Person who is a Member of the Village Association as provided in Section 4.6.

1.25 "Membership" means a membership in the Village Association.

1.26 "Membership Assessment" shall have the meaning given such term in Section 5.3.1(a).

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

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

1.29 "Neighborhood Association" means any homeowners association, condominium association or similar association formed or organized pursuant to any Neighborhood Declaration.

1.30 "Neighborhood Common Area" means all real property, and all Improvements located thereon, owned or leased by a Neighborhood Association for the common use and benefit of the members of the Neighborhood Association.

1.31 "Neighborhood Declaration" means any declaration of covenants, conditions and restrictions, condominium declaration or similar instrument, other than this Declaration, a Tract Declaration or the Master Declaration, Recorded against any part of the Project.

1.32 "Neighborhood Plat" means any subdivision plat or condominium plat Recorded against any portion of the Village with the intent of, or which has the effect of, subdividing such portion into Lots (together with any related Master Common Area, Village Common Area, Neighborhood Common Area and public rights-of-way), together with all amendments, supplements and corrections to such plat.

1.33 "Non-Residential Parcel" means any Parcel designated as such in a Tract Declaration Recorded against that Parcel pursuant to Article 12 of the Master Declaration.

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



1.35 "Owner" means the Person or Persons who individually or collectively own fee title to a Lot or Parcel (as evidenced by a Recorded instrument), provided that: (a) the Declarant (and not the fee title holder) shall be deemed to be the "Owner" of each Lot or Parcel with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of the Declarant or a Declarant Affiliate; (b) in the event that, and for so long as, the Declarant or a Declarant Affiliate has, pursuant to a written agreement, an existing right or option to acquire any one or more Lots or Parcels (other than by exercise of a right of first refusal or right of first offer), the Declarant shall also be deemed to be the "Owner" of each Lot or Parcel with respect to which the Declarant or a Declarant Affiliate has such right or option; and (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to Chapter 6.1 of Title 33 of the Arizona Revised Statutes, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot. Where reference is made in this Declaration to Lots or Parcels "owned by" a Person, such phrase shall be deemed to refer to Lots or Parcels of which that Person is the Owner, as determined pursuant to this Section.

1.36 "Parcel" means each area of real property in the Village, and all Improvements situated thereon, shown as a separate parcel of land on the Development Plan, provided, however, that in the event a Parcel is split in any manner into portions under separate ownership (other than by subdivision of the Parcel by Recordation of a subdivision plat into Lots, each of which constitutes or may have constructed thereon only one Residential Unit), each portion under separate ownership shall thereafter constitute a separate Parcel. If two or more contiguous parcels of land are owned by the same Person, they shall be considered one Parcel for purposes of this Declaration. A Parcel shall cease to be a Parcel when it has been fully subdivided into Lots (together with Village Common Area, Neighborhood Common Area and Master Common Area, if any). If a portion of a Parcel is subdivided into Lots (and Village Common Area, Neighborhood Common Area and Master Common Area, if any), the subdivided portion shall cease to be a Parcel, but each remaining unsubdivided portion shall be a Parcel if it otherwise meets the requirements of the definition set forth in this Section.

1.37 "Parcel Assessment" means an Assessment levied against fewer than all of the Lots and Parcels in the Village pursuant to Section 5.4.

1.38 "Parcel Assessment Area" means any part of the Village designated in a Tract Declaration (or other Recorded instrument approved by the Declarant, and by the Owner of the property subject thereto, if other than the Declarant) as an area which is to be operated, maintained, repaired and replaced by the Village Association but which is for the sole or primary benefit of the Owners of fewer than all of the Lots and Parcels in the Village.

1.39 "Period of Declarant Control" means the period commencing on the date of the Recording of this Declaration and ending on the earlier of: (a) one hundred twenty (120) days after the number of votes entitled to be cast by Owners other than the Declarant exceeds the number of votes entitled to be cast by the Declarant; (b) December 31, 2015; or (c) the date the Declarant Records a written instrument terminating the Period of Declarant Control.

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

1.41 "Property" or "Village" means the real property described on Exhibit A, together with all Improvements located thereon, and all real property, together with all Improvements located

thereon, which is annexed and subjected to this Declaration pursuant to Section 2.2, but excluding any real property, together with all Improvements thereon, which is withdrawn pursuant to Section 2.3.

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

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

1.44 "Resident" means each individual who resides in any Residential Unit.

1.45 "Residential Unit" means: (a) any building, or portion of a building, situated upon a Lot or Parcel (other than a Condominium Unit) and designed and intended for separate, independent use and occupancy as a residence; or (b) a Condominium Unit.

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

1.47 "Special Assessment" means any Assessment levied pursuant to Section 6.5.

1.48 "Special Use Fees" means any fees charged by the Village Association for use of Village Common Areas pursuant to Section 3.1.1(f).

1.49 "Tract Declaration" means a declaration Recorded pursuant to Section 2.2 of the Master Declaration.

1.50 "Village Articles" means the articles of incorporation of the Village Association, as amended from time to time.

1.51 "Village Association" means The Retreat Village Association at Grayhawk, an Arizona nonprofit corporation, and its successors and assigns.

1.52 "Village Association Land" means all land, together with all Improvements situated thereon, which the Village Association at any time owns in fee or in which the Village Association has a leasehold interest, easement or license for as long as the Village Association is the owner of the fee or holds such leasehold interest, easement or license.

1.53 "Village Association Rules" means the rules adopted by the Village Board pursuant to Section 4.3, as amended from time to time.

1.54 "Village Board" means the board of directors of the Village Association.

1.55 "Village Bylaws" means the bylaws of the Village Association, as amended from time to time.

1.56 "Village Common Area" means: (a) all Village Association Land; (b) all land, and the Improvements situated thereon, within the Village which the Declarant indicates on a Recorded subdivision plat, Tract Declaration or other Recorded instrument is to be conveyed to the Village Association for the benefit and use of the Members; (c) all land, and the Improvements situated thereon, which is situated within the boundaries of a Lot or Parcel and which is designated on a Recorded subdivision plat Recorded by the Declarant or approved by the Declarant or the Village Association as land which is to be improved, maintained, repaired and replaced by the Village Association; (d) all land, and the Improvements situated thereon, within or adjacent to the Village which the Declarant indicates on a Recorded subdivision plat, Tract Declaration or other Recorded instrument is to be maintained by the Village Association and is to be used for landscaping, drainage or water retention or flood control for the benefit of the Village or the general public; (e) all real property, and the Improvements situated thereon, within or adjacent to the Village located within dedicated rights-of-way with respect to which the City of Scottsdale has not accepted responsibility for the maintenance thereof, but only (1) if the specific areas to be maintained, repaired and replaced by the Village Association pursuant to this clause (e) have been expressly approved by either the Declarant or the Village Board, (2) if maintenance of such property and Improvements is not the responsibility of the Master Association pursuant to an applicable Tract Declaration or other Recorded instrument approved by the Declarant or the Master Association's board of directors, and (3) until such time as the City of Scottsdale has accepted all responsibility for the maintenance, repair and replacement of such areas; and (f) all land, and the Improvements situated thereon, which is designated in a Tract Declaration or a Recorded amendment to this Declaration as Parcel Assessment Area.

1.57 "Village Common Expenses" means expenditures made by or financial liabilities of the Village Association, together with any allocations to reserves.

1.58 "Village Documents" means this Declaration, all Tract Declarations (but only to the extent they expressly relate to the Village, the Village Association, Village Common Area or Village Association Land, or expressly provide they, or portions thereof, are enforceable by the Village Association), the Village Articles, the Village Bylaws and the Village Association Rules.

End of Article 1

## ARTICLE 2

### PLAN OF DEVELOPMENT

2.1 Property Initially Subject to the Declaration. This Declaration is being Recorded to establish a general plan for the development and use of the Village in order to protect and enhance the value and desirability of the Village. All of the property within the Village shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Village and evidences his, her or its intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Village Association and all Owners.

#### 2.2 Annexation of Additional Property.

2.2.1 At any time on or before December 31, 2015, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person (other than the Person who owns the property to be annexed, if other than the Declarant). The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording a written instrument (which may be, but shall not be required to be, a Tract Declaration) setting forth the legal description of the Additional Property being annexed and stating that such portion of the Additional Property is annexed and subjected to the Declaration. No portion of the Additional Property shall be annexed to the Village unless such portion is already subject to the Master Declaration or is, concurrently with its annexation to the Village, made subject to the Master Declaration and annexed to the Project (as that term is defined in the Master Declaration).

2.2.2 The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. Property annexed by the Declarant pursuant to this Section 2.2 need not be contiguous with other property in the Village, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property. The Declarant makes no assurances as to which, if any, part of the Additional Property will be annexed.

2.3 Withdrawal of Property. At any time on or before December 31, 2015, the Declarant shall have the right to withdraw property from the Village without the consent of any other Owner or Person (other than the Owner of such property, if other than the Declarant), except as otherwise expressly provided in the Tract Declaration with respect to such property. The withdrawal of all or any portion of the Village shall be effected by the Declarant Recording a written instrument

setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from the Village pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

2.4 Disclaimer of Representations. The Declarant makes no representations or warranties whatsoever that: (a) the Village will be completed in accordance with the plans for the Village as they exist on the date this Declaration is Recorded; (b) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (c) any property not now subject to this Declaration will be subjected to the provisions hereof; or (d) the use of any property subject to this Declaration will not be changed in the future. In addition, if any guardhouses are constructed within the Village, the Declarant makes no representations or warranties that a guard service will be provided or, if guard service is provided, that it will be provided during any particular hours or be continued in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen representing the Declarant or any Developer shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration or of any part of the Additional Property.

2.5 Restriction on Liability of the Village Association and the Declarant. Guardhouses may be constructed within or adjacent to the Village in order to limit access and to provide more privacy for the Owners and Occupants. Each Owner and Occupant, and their families, guests and invitees, acknowledge that any such guardhouse may restrict or delay entry into, or access within, the Village by police, fire department, ambulances and other emergency vehicles or personnel. Each Owner and Occupant and their families, guests and invitees agree to assume the risk that any such guardhouse will restrict or delay entry into, or access within, the Village by police, fire department, ambulances or other emergency vehicles or personnel. Neither the Declarant, the Village Association nor any director, officer, agent or employee of the Declarant or the Village Association shall be liable to any Owner or Occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of any such guardhouse.

2.6 Development Plan. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the Development Plan with respect to any property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the property owned by the Declarant or changing the nature or extent of the uses to which such property may be devoted.

End of Article 2

## ARTICLE 3

### EASEMENTS

#### 3.1 Owners' Easements of Enjoyment.

3.1.1 Subject to the rights and easements granted to the Declarant in Section 3.4, each Owner, and each Occupant of such Owner's Lot or Parcel, shall have a non-exclusive right and easement of enjoyment in, to and over the Village Common Area, which right and easement shall be appurtenant to and shall pass with the title to each Lot and Parcel, subject to the provisions of this Declaration including, without limitation, the following:

(a) Except as otherwise provided in this Declaration, no dedication, transfer, mortgage or encumbrance of all or any portion of the Village Common Area shall be effective unless approved by Owners representing two-thirds (2/3) of the votes in each class of Members. Notwithstanding the preceding sentence or any other provision of this Declaration to the contrary, the Village Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any part of the Property or of the Additional Property): (i) to dedicate portions of the Village Common Area to the public, or grant easements over, under or through portions of the Village Common Area to the public, to any municipal or other governmental agency or entity, or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by the City of Scottsdale or any municipal or other governmental agency or entity having jurisdiction, or by a public, quasi-public or private utility company, in connection with or at the time of the development of portions of the Property or of portions of the Additional Property; and (ii) to convey or otherwise transfer to a Neighborhood Association (but only with the consent of the board of directors of that Neighborhood Association) portions of the Village Common Area, in circumstances where, in the discretion of the Village Board, the interests of the Members would be better served by having such portions of the Village Common Area owned and maintained by the Neighborhood Association (and thereby become Neighborhood Common Area of that Neighborhood Association).

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

(c) If a Tract Declaration (or other Recorded instrument executed or approved in writing by the Declarant) designates a portion of the Village Common Area as a Parcel Assessment Area, then only the Owners and Occupants of those Lots and Parcels which are assessed a Parcel Assessment for such Parcel Assessment Area shall have the right to use such Parcel Assessment Area.

(d) The Declarant and the Village Association shall each have the right to grant easements or licenses to Developers or other Persons for the construction of Improvements on the Village Common Area, and the Declarant and the Village Association shall each have the right

to grant ingress and egress easements over the streets and roads in the Village to Persons who are not Members of the Village Association.

The Declarant and the Village Association shall each have the right to convey portions of the Village Common Area to Owners of adjoining Lots or Parcels in connection with the correction or adjustment of any boundary between Village Common Area and any one or more adjoining Lots or Parcels, and shall each also have the right to convey portions of the Village Common Area to the owner of any adjacent golf course in connection with any correction, adjustment, realignment or reconfiguration of such golf course or its boundaries, or in connection with the transfer of maintenance responsibilities with respect to the area conveyed from the Village Association to the owner of such golf course, or in such other circumstances as the Declarant or the Village Board (as applicable) may deem appropriate, in its respective sole but good faith discretion; provided, however, that neither the Village Association nor the Declarant shall have the right to transfer or convey any portion of the Village Common Area upon which is situated any recreational facility (other than golf course-related improvements or facilities constructed by the owner of an adjacent golf course, or by an affiliate of such golf course owner) unless approved by a vote of the Members pursuant to Subsection 3.1.1(a).

(f) The Village Association shall have the right to charge Special Use Fees for the use of the Village Common Area. The Special Use Fees, if any, shall be set by the Village Board from time to time, in its discretion. Special Use Fees shall be charged only for actual entry upon or use of those portions of the Village Common Area (including, but not limited to, Parcel Assessment Area), if any, selected by the Village Board to be subject to a Special Use Fee, and shall be imposed only where the Village Board deems it appropriate to collect revenue from the actual users of such selected portions of the Village Common Area so that some or all of the costs of operating such selected portions of the Village Common Area are paid through Special Use Fees charged to Owners, Occupants and other Persons using such selected portions of the Village Common Area, rather than solely through Assessments.

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

3.1.2 If a Lot or Parcel is leased or rented by its Owner, the Occupants of such Lot or Parcel shall have the right to use the Village Common Area during the term of the lease, and the Owner of such Lot or Parcel shall have no right to use the Village Common Area until the termination or expiration of such lease.

3.1.3 The Village Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Village Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

3.2 Utility Easement. There is hereby created an easement upon, across, over and under the Village Common Area, Lots, Parcels and other property for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary

equipment on the Village Common Area, Lots, Parcels and other property but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Village Common Area, Lots, Parcels and other property except as initially designed, approved and/or constructed by the Declarant or as approved by the Village Board (and, in the case of a Lot or Parcel, by the Owner of such Lot or Parcel). If any utility company requests that a more specific easement be granted in its favor in substitution for the blanket easement hereby established with respect to the Village Common Area, the Village Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Village Board deems appropriate.

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

3.4 Declarant's Use and Easements.

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

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

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



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

3.5 Easements in Favor of Village Association. The Lots, Parcels and Neighborhood Common Area are hereby made subject to the following easements in favor of the Village Association and its directors, officers, agents, employees and independent contractors:

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

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

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

3.5.4 For the purpose of enabling the Village Association, the Village Board or any committees appointed by the Village Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Village Documents;

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

3.6 Change of Use of Common Area. Upon: (a) adoption of a resolution by the Village Board stating that in the Village Board's opinion the then present use of a designated part of the Village Common Area is no longer in the best interests of the Owners; and (b) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such Village Common Area under the terms of this Declaration or any Tract Declaration, the Village Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Village Board to accommodate the new use), provided such new use shall be consistent with any zoning regulations restricting or limiting the use of the Village Common Area. This Section 3.6 shall not apply to, or be deemed to limit in any way, the right and power of the Village Association pursuant to Section 3.1.1(a) to grant easements over, under or through portions of the Village Common Area, or to dedicate portions of the Village Common Area, to public, quasi-public or private utility companies, municipalities or other governmental agencies or entities, in connection with or at the time of development of property within or adjacent to the Village, where required or requested by any municipality or other governmental agency or entity, or any public, quasi-public or private utility company.

End of Article 3

## ARTICLE 4

### THE VILLAGE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

4.1 Formation of Village Association. The Village Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Village Articles, the Village Bylaws and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Village Articles, Village Bylaws or Village Association Rules, this Declaration shall control.

4.2 Board of Directors and Officers. The affairs of the Village Association shall be conducted by the Village Board and such officers as the Village Board may elect or appoint in accordance with the Village Articles and the Village Bylaws. Unless the Village Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Village Association shall be valid if given or taken by the Village Board. The Village Board may appoint various committees at its discretion. The Village Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Village Association and the Village Common Area; the Village Board shall determine the compensation to be paid to any such manager.

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

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

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

4.6 Membership in the Village Association. Every Owner of a Lot or Parcel which is Assessable Property shall be a Member of the Village Association, and the Declarant shall be a Member of the Village Association so long as it owns any part of the Village or of the Additional

Property (unless and until the Declarant expressly relinquishes in writing its status as a Member). Each such Owner shall have the following number of Memberships in the Village Association:

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

4.6.2 Where an Owner owns a Parcel subject to a Tract Declaration which (a) is applicable only to that Parcel, and (b) assigns a specific number of Memberships to such Parcel, such Owner shall have, with respect to that Parcel, the number of Memberships so assigned.

4.6.3 Where an Owner owns a Parcel subject to a Tract Declaration which applies to other Assessable Property in addition to that Parcel, and which assigns a specific aggregate number of Memberships to all property subject to that Tract Declaration (the "Total Tract Memberships"), then, unless the Tract Declaration specifically provides otherwise (and unless and until that Parcel is subdivided into Lots), the number of Memberships attributable to that Parcel shall be determined as follows:

(a) if the other Assessable Property covered by that Tract Declaration consists only of Lots, the number of Memberships attributable to that Parcel shall equal the Total Tract Memberships less the total number of such Lots;

(b) if the other Assessable Property consists only of one or more other Parcels, the number of Memberships attributable to each of the Parcels subject to the Tract Declaration shall be determined by allocating the Total Tract Memberships among such Parcels proportionately based on their respective sizes (measured in net acres), as reasonably determined and allocated by Declarant; and

(c) if the other Assessable Property consists of Lots and one or more other Parcels, the number of Lots shall first be subtracted from the Total Tract Memberships, and the remaining number of Memberships shall be allocated among all Parcels subject to the Tract Declaration in the manner provided in paragraph (b) above.

4.6.4 In the case of a Parcel with respect to which no Tract Declaration has yet been Recorded, the Owner of the Parcel shall have one Membership for each Residential Unit permitted on such Parcel under then-current zoning. Total Memberships attributable to a Parcel with respect to which no Tract Declaration has yet been Recorded shall, upon Recordation of a Tract Declaration, be adjusted and re-determined in accordance with the provisions of this Section 4.6. Further, as to any Parcel which is subdivided into Lots, upon such subdivision the Memberships attributable to such Lots shall be adjusted and re-determined in accordance with Section 4.6.1 (and, as to any portion of such Parcel which is not subdivided and therefore itself constitutes a Parcel, the total Memberships attributable to such "new" Parcel shall be adjusted and re-determined in accordance with this Section 4.6).

4.6.5 If, at any time when the Declarant is a Member of the Village Association but would have no Memberships pursuant to Sections 4.6.1, 4.6.2, 4.6.3 or 4.6.4, the Declarant shall nevertheless be deemed to have one (1) Membership, provided, however, that the number of votes held by the Declarant shall be determined pursuant to Section 4.7.

#### 4.7 Votes in the Village Association.

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

4.7.2 Until the expiration or termination of the Period of Declarant Control, the Declarant shall be entitled to the number of votes equal to two thousand two hundred (2,200) minus the total number of outstanding votes held at the time by Owners other than the Declarant. After the expiration or termination of the Period of Declarant Control, the Declarant shall have one (1) vote for each Membership held by the Declarant.

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

4.8 Voting Procedures. A change in the ownership of a Lot or Parcel shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded; the Village Board shall thereafter be given written notice of such change and provided satisfactory evidence thereof. The vote for each such Lot or Parcel must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot or Parcel is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot or Parcel, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot or Parcel unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote or votes for a particular Lot or Parcel, the vote or votes for that Lot or Parcel shall be deemed void and shall not be counted.

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

Association may require the Purchaser of a Lot or Parcel to pay to the Village Association a transfer fee as provided in Section 5.12, and the transfer fee shall be secured by the Assessment Lien.

End of Article 4

## ARTICLE 5

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

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

#### 5.2 Annual Assessment.

5.2.1 In order to provide for the operation and management of the Village Association and to provide funds for the Village Association to pay all Village Common Expenses and to perform its duties and obligations under the Village Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Village Board, for each Assessment Period beginning with the fiscal year ending December 31, 1996, shall assess an Annual Assessment against each Lot and Parcel which is Assessable Property.

5.2.2 Beginning with the 1996 Assessment Period, the Village Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give prior notice shall not affect the validity of the Annual Assessment established by the Village Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Village Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become, inadequate to meet all Village Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Village Board (provided, however, that the total Annual Assessment for such Assessment Period shall not exceed the maximum amount determined pursuant to Section 5.3).

#### 5.3 Rate of Assessment.

5.3.1 The amount of the Annual Assessment against each Lot or Parcel shall be determined as follows:

(a) The term "Membership Assessment" shall mean: (i) for the fiscal year ending December 31, 1996, Five Hundred Four Dollars (\$504.00); (ii) for the fiscal

year ending December 31, 1997, Five Hundred Twenty-Eight Dollars (\$528.00); and (iii) for each subsequent fiscal year, the amount equal to the total budget of the Village Association (except for any Village Common Expenses to be assessed as a Parcel Assessment under Section 5.4) for the applicable Assessment Period divided by the total number of Memberships in the Village Association (subject to Subsection 5.3.1(b) below).

(b) Except for Lots and Parcels subject to assessment pursuant to paragraphs (c) and (d) of this Subsection 5.3.1 and except for Lots and Parcels owned by the Declarant which are exempt from assessment under paragraph (e) of this Subsection 5.3.1, each Lot and Parcel shall be assessed an Annual Assessment in an amount equal to the number of Memberships attributable to such Lot or Parcel pursuant to Section 4.6 of this Declaration multiplied by the Membership Assessment. Notwithstanding any provision of this Declaration to the contrary, beginning with the fiscal year ending December 31, 1998, the Membership Assessment provided for herein shall not for any fiscal year of the Village Association exceed the Maximum Membership Assessment, as determined in accordance with this paragraph (b). For the fiscal year ending December 31, 1998, the Maximum Membership Assessment shall be Five Hundred Fifty-Eight Dollars (\$558.00). Thereafter, unless a greater increase is approved by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, the Maximum Membership Assessment for any fiscal year (the "New Year") shall be equal to the Maximum Membership Assessment for the immediately preceding fiscal year (the "Prior Year") increased at a rate equal to the greater of: (i) the percentage increase in the CPI from the Base Month to the Index Month (as each of those terms is defined below); or (ii) ten percent (10%). Nothing herein shall obligate the Village Board to establish, in any fiscal year, a budget which results in Membership Assessments, as calculated pursuant to paragraph (a) above, to be in the full amount of the Maximum Membership Assessment for such fiscal year, and the election by the Village Board not to establish a budget which would result in the Membership Assessment, as calculated pursuant to paragraph (a) above, to be in the full amount of the Maximum Membership Assessment for any fiscal year shall not prevent the Village Board from establishing a budget in subsequent fiscal years such that the Membership Assessment for such subsequent fiscal year, as calculated pursuant to paragraph (a) above, is in the full amount of the Maximum Membership Assessment for such subsequent fiscal year (as determined in accordance with this paragraph (b)). For purposes hereof: (x) the term "CPI" means the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, in the index most similar in composition to such index; (y) the term "Index Month" means the month of July immediately prior to the beginning of the New Year; and (z) the term "Base Month" means the month of July immediately prior to the beginning of the Prior Year; provided, however, that if the Village Board changes the Assessment Period pursuant to Section 5.6, the Village Board shall have the right to change the calendar month used for purposes of clauses (y) and (z) (so long as the same calendar month in successive years is used for both clauses).

(c) Each Lot shall be assessed an Annual Assessment of twenty-five percent (25%) of the Membership Assessment until the earliest of: (i) the completion of a Residential Unit on the Lot; (ii) six (6) months from the commencement of construction

of a Residential Unit on the Lot; or (iii) four (4) years from the date of the Recording of the Tract Declaration applicable to the Lot (or to the Parcel from which the Lot was created). Thereafter the Annual Assessment for the Lot shall be an amount equal to the Membership Assessment.

(d) A Parcel having a Land Use Classification of Single Family Residential Use, Residential Condominium Use, Townhouse Residential Use or Multi-Family Residential Use (as determined in the Tract Declaration applicable to such Parcel) shall be assessed an Annual Assessment of twenty-five percent (25%) of the amount equal to the number of Memberships attributable to such Parcel under Section 4.6 of this Declaration multiplied by the Membership Assessment until three (3) years from the date of the Recording of the Tract Declaration for the Parcel. Thereafter, the Parcel shall be assessed an Annual Assessment equal to the number of Memberships attributable to such Parcel under Section 4.6 of this Declaration multiplied by the Membership Assessment.

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

(f) Notwithstanding Subsections 5.3.1(c) and 5.3.1(d) or any other provision of this Declaration to the contrary, a Tract Declaration executed by the Declarant may provide for a delay in the initial commencement of Annual Assessments against the Parcel or any one or more Lots to which that Tract Declaration applies, but in no event shall Annual Assessments against such Parcel or such a Lot initially commence later than the first to occur of: (i) the date which is one (1) year after the date the applicable Tract Declaration is Recorded; or (ii) the date as of which eligibility of the Parcel or Lot for assessment at a reduced level pursuant to Subsection 5.3.1(c) or 5.3.1(d), as applicable, would otherwise have terminated.



5.3.2 For purposes of this Section, construction of a Residential Unit or other building shall be deemed to commence on the earlier of: (a) the date on which the excavation of the foundation footings is completed; or (b) the date on which a building permit for the Residential Unit or other building is issued by the City of Scottsdale. For purposes of this Section, a Residential Unit, Condominium Unit or other building shall be deemed completed when, in the opinion of the Board, the building is ready for occupancy.

5.3.3 If the rate of assessment for any Lot or Parcel changes during any Assessment Period pursuant to the provisions of Subsection 5.3.1, the Annual Assessment attributable to such Lot or Parcel shall be prorated between the applicable rates upon the basis of the number of days in the Assessment Period that the Lot or Parcel was assessed under each rate.

5.4 Parcel Assessments. All Village Common Expenses pertaining to the operation, maintenance, repair and replacement of Parcel Assessment Area shall be shown separately in the budget adopted by the Village Board. The Village Common Expenses pertaining to the operation, maintenance, repair and replacement of a Parcel Assessment Area (which Village Common Expenses shall for purposes of this Section 5.4 include, without limitation: [a] any contributions to reserves for maintenance, replacement and repairs and for contingencies; [b] any additional insurance premiums charged to the Village Association because of the type or nature of the Parcel Assessment Area; and [c] any costs, losses, damages, liabilities or expenses, including without limitation attorneys' fees and court costs, suffered or incurred by the Village Association by reason of its ownership, operation, maintenance, replacement or repair of the Parcel Assessment Area [to the extent they exceed the amount of any insurance proceeds received by the Village Association or any proceeds recovered by the Village Association from other parties, as reasonably determined by the Village Board]) shall be assessed solely against the Lots and Parcels which are benefitted by the Parcel Assessment Area as established by the Tract Declaration designating the Parcel Assessment Area. No Village Common Expenses pertaining to the operation, maintenance, repair or replacement of a Parcel Assessment Area shall be used in computing the Annual Assessments to be levied pursuant to Sections 5.2 and 5.3. Unless otherwise provided for in the applicable Tract Declaration (or other Recorded instrument executed or approved in writing by the Declarant), Parcel Assessments shall be levied against the Lots and Parcels benefitted by the Parcel Assessment Area at a uniform rate per Membership. If the Village Board determines during any Assessment Period that Parcel Assessments with respect to any Parcel Assessment Area are, or will, become inadequate to meet all Village Common Expenses pertaining to that Parcel Assessment Area for any reason, including, without limitation, nonpayment of Parcel Assessments by Members, the Village Board may increase the Parcel Assessment for that Assessment Period and the revised Parcel Assessment shall commence on the date designated by the Village Board.

5.5 Special Assessments. The Village Association may levy against each Lot and Parcel which is Assessable Property, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Improvements upon the Village Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

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

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

5.8 Effect of Nonpayment of Assessments; Remedies of the Village Association.

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

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

5.8.3 The Assessment Lien shall have priority over all liens or claims except for (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental body; and (c) the lien of any First Mortgage. Regardless whether the Assessment Lien has, or is deemed to have, priority over liens securing assessments levied pursuant to the Master Declaration or a Neighborhood Declaration (or both), foreclosure of the Assessment Lien with respect to a Lot or Parcel shall not impair, extinguish or otherwise affect such other assessment liens or relieve or release any obligations for such other assessments secured by such Lot or Parcel.

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

5.8.5 The Village Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys fees and any other sums due to the Village Association in any manner allowed by law including, but not limited to: (a) bringing an action at law against the Owner personally obligated to pay the delinquent

Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments; or (b) bringing an action to foreclose the Assessment Lien against the Lot or Parcel in the manner provided by law for the foreclosure of a realty mortgage. The Village Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots or Parcels purchased at such sale.

5.9 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Village Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating: (a) that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot or Parcel as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Village Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot or Parcel in question.

5.10 Purposes for Which Village Association's Funds May be Used. The Village Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Village and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Village, which may be necessary, desirable or beneficial to the general common interests of the Village, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Village Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Occupants, maintenance of landscaping on Village Common Area and public right-of-way and drainage areas within the Village, construction, operation and maintenance of recreational and other facilities on Village Common Area, operation, maintenance, replacement and repair of Parcel Assessment Area and Improvements thereon, recreation, insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Village Association, employment of professional managers, and hiring professional consultants such as architects, engineers, attorneys and accountants.

5.11 Surplus Funds. The Village Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Village Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Village Association may carry forward from year to year such surplus as the Village Board in its discretion may determine to be desirable for the greater financial security of the Village Association and the accomplishment of its purposes.

5.12 Transfer Fee. Each Purchaser of a Lot or Parcel shall pay to the Village Association immediately upon becoming the Owner of the Lot or Parcel a transfer fee in such amount as the Village Board may reasonably establish from time to time to defray administrative costs associated with such change in ownership.

5.13 Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments. Notwithstanding any other provision hereof or of the Village Articles, Village Bylaws or Village Association Rules, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment, as required by Section 5.5 hereof; or (b) approving any increase in the Maximum Membership Assessment greater than that permitted by Section 5.3.1(b), shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in the Maximum Membership Assessment, a quorum shall consist of sixty percent (60%) of the votes in each class of Members (whether represented in person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

5.14 Assessments by Village Association. All Assessments and other charges, fees and amounts levied, assessed, charged or otherwise authorized by or pursuant to this Declaration or any of the other Village Documents are in addition to, and not in lieu of or in substitution for, assessments, charges, fees or other amounts levied, assessed, charged or otherwise authorized by or pursuant to the Master Declaration or any of the other Project Documents (as that term is defined in the Master Declaration), or by or pursuant to any Neighborhood Declaration or any articles of incorporation, bylaws or rules of a Neighborhood Association.

End of Article 5

## ARTICLE 6

### MAINTENANCE

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

6.1.1 The Village Association, or its duly delegated representative, shall manage, maintain, repair and replace the Village Common Area and all Improvements located thereon (subject to Section 6.1.3), except the Village Association shall not be obligated to maintain areas which any governmental entity or any utility company is maintaining or is obligated to maintain.

6.1.2 Subject to the provisions of the Master Declaration and any applicable Tract Declaration, the Village Board shall be the sole judge as to the appropriate maintenance of all Village Common Area and other properties maintained by the Village Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Village Board or by its duly delegated representative.

6.1.3 In the event any subdivision plat, Tract Declaration, deed restriction or this Declaration permits the Village Board to determine whether or not Owners of certain Lots of Parcels will be responsible for maintenance of certain Village Common Area or public right-of-way areas, the Village Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants for the Village Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Village Board. The Village Board may cause the Village Association to contract to provide maintenance service to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as the Village Association and Owner may agree upon.

6.2 Lots and Parcels. Each Owner of a Lot or Parcel shall be responsible for maintaining, repairing or replacing his, her or its Lot or Parcel, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot or Parcel which is Village Common Area (unless otherwise required by the Village Board pursuant to Section 6.1.3). All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. Landscaping shall be maintained as required by this Declaration, the Master Declaration and by any applicable Tract Declaration. All Lots and Parcels upon which no Residential Units or other Improvements have been constructed shall be maintained in a weed free and attractive manner.

6.3 Installation of Landscaping. Notwithstanding any less restrictive provision of the Master Declaration to the contrary, the Owner of a Lot shall install (if not already installed) grass, trees, plants and other landscaping improvements (together with an irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements) in the front yard of the Lot, and in any side or back yard of the Lot, regardless whether all or any part of any such yard is fully or partly enclosed by a fence or wall, not later than sixty (60) days after the date on which title to the Lot is first conveyed to a Purchaser (as evidenced by Recordation of a deed). All landscaping must be installed in accordance with plans approved in writing as required by the Master Declaration. If landscaping and an irrigation system are not installed on a Lot in the manner and by the applicable date provided for in this Section, the Village Association shall have the right, but not the obligation,

to enter upon such Lot to install such landscaping improvements as the Village Association deems appropriate (together with an irrigation system sufficient to adequately water the same), and the cost of any such installation shall be paid to the Village Association by the Owner of the Lot, upon demand from the Village Association. Any amounts payable by an Owner to the Village Association pursuant to this Section shall be secured by the Assessment Lien, and the Village Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments. The Declarant intends and expects that the landscaping and related improvements (including, but not limited to, the required irrigation system) required by this Section to be installed on a Lot prior to the date the Lot is first conveyed to a Purchaser or the date the Residential Unit is first occupied (whichever is earlier) will be fully and completely installed by the Developer of the Lot prior to such first conveyance or first occupancy; while nothing in this Section will relieve or release an Owner of the Lot of or from any obligations under this Section, such obligations shall also be joint and several obligations of such Developer, and the Village Association shall also have all rights and remedies against such Developer as it has under this Section against the Owner of the Lot in question, including, but not limited to, the right to collect from such Developer any and all costs of the Village Association's installation of landscaping and related improvements (including, but not limited to, the required irrigation system), and all costs and expenses of collecting same or otherwise enforcing such Developer's obligations, which the Village Association may pursue before, after or at the same time as it pursues any rights or remedies against the Owner of the applicable Lot, or without pursuing its rights or remedies against such Owner. Likewise, the Village Association may pursue its rights and remedies under this Section against the Owner of the applicable Lot before, after or at the same as it pursues any rights or remedies against the applicable Developer, or without pursuing its rights or remedies against such Developer.

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

6.5 Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots and Parcels or other areas of the Village which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner which violates this Declaration or any Tract Declaration or Neighborhood Declaration applicable thereto, or in the event the Owner of any Lot or Parcel is failing to perform any of its obligations under the Village Documents or any Tract Declaration or Neighborhood Declaration applicable thereto, the Village Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Village Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period the requisite corrective action has not been taken, the Village Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien.

6.6 Improper Maintenance of Neighborhood Common Area. If any Neighborhood Common Area is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots and Parcels or other areas of the Village which are substantially affected thereby or related thereto, or if any portion of the Neighborhood Common Area is being used in a manner which violates this Declaration, or any Tract Declaration or Neighborhood Declaration applicable thereto, or if the Neighborhood Common Area is not maintained in the manner required by this Declaration, or any Tract Declaration or Neighborhood Declaration applicable thereto, the Village Board may make a finding to such effect specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the Neighborhood Association responsible for the maintenance of such Neighborhood Common Area that unless corrective action is taken within fourteen (14) days the Village Board may cause such action to be taken at the Neighborhood Association's expense. If at the expiration of such 14-day period, the requisite corrective action has not been taken, the Village Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be payable to the Village Association by the Neighborhood Association within ten (10) days after demand therefor is made by the Village Association.

6.7 Maintenance of Walls.

6.7.1 Walls (other than common walls) located on a Lot or Parcel shall be maintained, repaired and replaced by the Owner of the Lot or Parcel. Common walls shall be maintained as provided in the Master Declaration.

6.7.2 Any wall which is placed on the boundary line between a Lot or Parcel and the Village Common Area shall be maintained, repaired and replaced by the Owner of the Lot or Parcel, except that the Village Association shall be responsible for the repair and maintenance of the side of the wall which faces the Village Common Area.

6.8 Exterior Lights. In order to provide street lighting, each Residential Unit shall have two exterior lights on the front exterior wall of its garage, which lights shall be operated by a photo cell; such lights (including the photo cell) must be approved in advance by the Declarant (or, after the Period of Declarant Control, by the Village Board) as to type, size, design, color, bulb type and intensity and location. Each Owner shall maintain such exterior lights on that Owner's Lot in good working order and repair, and shall replace bulbs and otherwise repair the lights (and photo cell) as necessary and in accordance with any guidelines or regulations promulgated by the Declarant or the Village Board pursuant to this Section. To assist Owners, Developers and builders, the Declarant (or, after the Period of Declarant Control, the Village Board) may promulgate guidelines or regulations with respect to such lights, including without limitation their type, size, design, color, location, bulb type and intensity, and hours of operation. If the Village Board deems it appropriate, in its discretion, the Village Association may install and maintain wiring, meters and such other equipment and facilities as the Village Board deems necessary to provide electrical service to such lights or otherwise to assure proper operation thereof.

End of Article 6

## ARTICLE 7

### INSURANCE

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

7.1.1 Property insurance on the Village Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Village Common Area, as determined by the Village Board; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

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

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

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

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

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

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

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

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

(e) Statement naming the Village Association as the insured;



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

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

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

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

7.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Village Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Village Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners representing at least eighty percent (80%) of the total votes in the Village Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Village Association. If the entire Village Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Village Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Village Association as an additional capital reserve; or (ii) be used for payment of operating expenses of the Village Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Village Association.

End of Article 7

## ARTICLE 8

### GENERAL PROVISIONS

8.1 Enforcement. The Village Association or any Owner shall have the right to enforce the Village Documents.

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

#### 8.3 Amendments.

8.3.1 Except for amendments made pursuant to Subsections 8.3.2 or 8.3.3 of this Declaration, this Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Members holding not less than sixty-seven percent (67%) of the votes in the Village Association.

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

8.3.3 So long as the Declarant is entitled to cast at least sixty-seven percent (67%) of the votes in the Village Association, the Declarant may amend this Declaration without the consent or approval of any other Owner or other Person.

8.3.4 So long as the Declarant or any Declarant Affiliate owns any Lot, Parcel or other portion of the Property, or any portion of the Additional Property, no amendment to this Declaration shall be effective unless approved in writing by the Declarant (or unless the Declarant expressly waives in writing its right to approve such amendments).

8.3.5 Any amendment approved pursuant to Subsection 8.3.1 of this Declaration or by the Village Board pursuant to Subsection 8.3.2 of this Declaration shall be signed by the President or Vice President of the Village Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsections 8.3.2 or 8.3.3 of this Declaration shall be executed by the Declarant and shall be Recorded.

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

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

8.6 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

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

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

8.9 Laws, Ordinances and Regulations.

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

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

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

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

8.12 Captions and Title; Section References; Exhibits. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

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

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

Village Association to him or her, or for his or her benefit, with interest (should the Village Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

8.15 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Village Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Village Common Area or any funds or other assets of the Village Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot or Parcel (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Village Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Village Common Area, which shall be subject to Section 3.1) which may or may not be subject to this Declaration.

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

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

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

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

8.20 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon the Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as the Declarant, any Declarant Affiliate or a trustee for the benefit of the Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of the Declarant.

8.21 High Power Transmission Lines. Each Owner, by accepting a deed to a Lot or Parcel, or by otherwise acquiring title to a Lot or Parcel, acknowledges that: (a) the Village includes, or may include or be adjacent to or in the vicinity of, property which is subject to easements for high power transmission lines and related towers, systems and other equipment (some of which may be on or over Village Common Area, Master Common Area, Neighborhood Common Area and/or other open space or recreational areas); (b) some studies have suggested links between such high power transmission lines, or similar systems or equipment, and increased incidences of various illnesses in persons residing nearby (including, without limitation, some forms of cancer); (c) the Declarant has made no representations, warranties or statements regarding such easements or such high power transmission lines or related towers, systems or equipment (except to note their existence), or any health or other risks related (or potentially related) thereto; and (d) such Owner (for such Owner and its family members, other Occupants, successors and assigns) hereby accepts and assumes any and all health and other risks as may now or hereafter be or become associated with such high power transmission lines, or similar systems or equipment, or any new or replacement equipment or systems, and agrees not to assert or make any claim against the Declarant, any Declarant Affiliate or the Village Association, or any director, officer, employee, agent, representative or contractor of any of them, related thereto.

#### 8.22 Bulk Service Agreements.

8.22.1 The Village Board, acting on behalf of the Village Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Village Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots, Parcels or both within the Village, or within one or more

portions thereof, cable television, community satellite television or other electronic entertainment, information or communication services: (a) which might not otherwise be generally available to such Owners and Occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; (c) otherwise on terms and conditions which the Village Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

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

8.22.3 The Declarant, for each Lot and Parcel, hereby covenants and agrees, and each Owner other than the Declarant, by becoming the Owner of a Lot or Parcel, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot or Parcel) by the Village Board pursuant to this Section 8.22, and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots or Parcels against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Village Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot or Parcel at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

8.22.4 No Owner of a Lot or Parcel covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Village Board to such Owner or such Owner's Lot or Parcel under this Section 8.22, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Village Board shall have the right, at its option, to exempt from payment of such amounts any Lot or Parcel upon which no Residential Unit or other building has been completed.

8.22.5 "Bulk Provider" means a private, public or quasi-public utility or other company which provides, or proposes to provide, cable television, community satellite television or other electronic entertainment, information or communication services to Lots, Parcels or both within the Village, or within one or more portions thereof, pursuant to a "Bulk Service Agreement" (as defined below).

8.22.6 "Bulk Service Agreement" means an agreement between the Village Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television or other electronic entertainment, information or communication services to Lots, Parcels or both within the Village, or within one or more portions thereof.

8.22.7 During the Period of Declarant Control, the Village Board shall not, without the approval of Members holding at least fifty-one percent (51%) of all Class A votes represented in person or by proxy at an annual or special meeting of the Members of the Village Association, enter into a Bulk Service Agreement which imposes on the Village Association or its Members (other than Declarant or a Developer which, in either case, agrees in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any such cable television, community satellite television or electronic entertainment, information or communication services, but nothing in this Section 8.22.7 shall prevent the Village Board from entering into, or require approval by the Members of, any Bulk Service Agreement which imposes on the Village Association or its Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Scottsdale, Arizona, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

8.23 Relationship to Master Declaration. This Declaration and the other Village Documents shall be interpreted and applied, to the maximum extent reasonably possible, so as not to conflict with any provisions of the Master Declaration or any other Project Documents (as that term is defined in the Master Declaration), but in the event of any conflict between any provision of any of the Village Documents and any provision of the Master Declaration or any of such other Project Documents, the provision in the Master Declaration or such other Project Document, as applicable, shall govern.

End of Article 8



## ARTICLE 9

### GOLF COURSES

9.1 Disclaimer Regarding Golf Courses. All Persons, including without limitation all Owners, are hereby advised that no representations, warranties or commitments have been or are made by the Declarant or any other Person with regard to the present or future development, ownership, operation or configuration of, or right to use, any golf course or related facilities within, near or adjacent to the Property, whether or not depicted on the Development Plan or any other land use plan, sales brochure or other marketing display or plat. No purported representation, warranty or commitment, written or oral, in such regard shall ever be effective without an amendment hereto executed by the Declarant. Further, the ownership, operation or configuration of, or rights to use, any such golf course or related facilities may change at any time and from time to time for reasons including, but not limited to: (a) the purchase or assumption of operation of any such golf course or related facilities by an independent Person; (b) the conversion of any such golf course or related facilities to an equity club or similar arrangement whereby members of such golf course or an entity owned or controlled thereby become the owner(s) and/or operator(s) of such golf course or related facilities (and, perhaps, such members become the only Persons entitled to use such golf course or related facilities); (c) the conveyance, pursuant to contract, option or otherwise, of such golf course or related facilities to one or more affiliates, shareholders, employees or independent contractors of the Declarant; or (d) the conveyance of any such golf course or related facilities, or portion thereof, to the Village Association, to the Master Association, or to one or more Neighborhood Associations or other village associations. As to any of the foregoing or any other alternative, no consent of the Village Association, the Master Association, any other village association, any Neighborhood Association or any Owner shall be required to effectuate such transfer (except for the consent of the Village Association in the event of a transfer to the Village Association or of the Master Association or the applicable other village association or Neighborhood Association in the event of a transfer to the Master Association or such other village association or Neighborhood Association). No Owner or Occupant shall have any ownership interest in, or right to use, any such golf course or related facilities solely by virtue of: (i) his, her or its membership in the Village Association, the Master Association, any other village association or any Neighborhood Association; or (ii) his, her or its ownership, use or occupancy of any Lot or Parcel, or portion thereof.

9.2 Rights of Access and Parking. Each such golf course and its members, invitees (including, without limitation, players and spectators, and regardless of whether such members or invitees are Owners), employees, agents, contractors or designers shall at all times have a right and nonexclusive easement of access and use over all roadways located within the Property as reasonably necessary to travel to and from any entrance within the Property to and from such golf course or related facilities and, further, over those portions of the Property (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of such golf course and its facilities. Without limiting the generality of the foregoing, members and invitees of such golf course shall have the right to park their vehicles on the roadways within the Property at reasonable times before, during and after golf tournaments and other functions held at such golf course.

9.3 Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of any such golf course, no amendment to this Article and no amendment in derogation of this Article to any other provisions of this Declaration may be made, without the written approval thereof by the owner(s) of any such golf course. The foregoing shall not apply,

however, to amendments made by the Declarant, including, but not limited to, amendments made by the Declarant pursuant to Section 8.3.

9.4 Golf Cart Path Easements. There may be golf cart path easements designated as such on one or more plats of the Property, or portions thereof, or in one or more Tract Declarations or other Recorded instruments, which may be used for golf cart paths, pedestrian walkways, maintenance and vehicle access, and unhindered access between said paths and any golf course. Nothing shall be placed or maintained in any golf cart path easement which shall interfere with utilization thereof as a playable part of such golf course, and all landscaping and other Improvements within a golf cart path easement (except those installed or constructed by the Declarant) shall require the approval of the owner of the golf course benefitted by such easement.

9.5 Golf Balls, Disturbances and Nuisances. Each Owner understands and agrees that his, her or its Lot or Parcel is or may be adjacent to or near one or more golf courses and related facilities and that golf course-related activities, including, without limitation, regular course play and tournaments, may be held within or adjacent to the Property. Each Owner acknowledges that the location of his, her or its Lot or Parcel within the Property may result in nuisances or hazards to persons and property on such Lot or Parcel as a result of normal golf course operations or as a result of such other golf course-related activities. Each Owner covenants for itself, its successors and assigns, and for such Owner's Occupants and family members, that it and they assume all risks associated with such location, including but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to such golf course-related activities and shall indemnify and hold harmless the Village Association, the Declarant, the owner(s) and operator(s) of any such golf course or related facilities and any and all sponsors and promoters of any tournament or other activity on or involving any such golf course or related facilities, for, from and against any liability, claims or expenses, including attorneys' fees and court costs, arising from such property damage or personal injury. Each Owner further covenants that the Village Association, the Declarant and the owner of any such golf course shall have the right, in the nature of an easement, to subject all or any portion of the Property to nuisances incidental to the maintenance, operation or use of any such golf course, and to the carrying out of such golf course-related activities, including, without limitation, tournament play.

9.6 Operation of the Golf Course. Each Owner acknowledges that the operation and maintenance of any golf course within, near or adjacent to the Property may require that maintenance personnel and other workers will perform work relating to the operation and maintenance of such golf course as early as 4:00 a.m. and as late as 9:00 p.m. on a daily basis, and, in certain circumstances (including, without limitation, during tournaments), at any time(s) of the day or night. In connection therewith, each Owner and Resident agrees that the Declarant, and the owner or owners of all or any portion of such golf course, and the employees, agents and contractors of the Declarant and such owners, shall not be responsible or accountable for, and shall be held harmless from, any claims, causes of action, loss or liability arising in connection with or associated with any noise or inconvenience normally associated with such operation and maintenance activities.

9.7 Other Golf Course Related Agreements. No Owner or Occupant, and no guest, invitee, employee, agent or contractor of any Owner or Occupant, shall at any time enter upon any golf course (or related facilities) within, adjacent to or near the Project for any purpose (other than to engage in golf play or as a spectator or guest of the golf course, in each and every case subject to all rules and regulations of such golf course including, without limitation, all requirements relating to membership, fees, reservation of tee times and the like), and each Owner and Occupant shall keep

his, her or its pets and other animals off any golf course (and out of any related facilities) at all times. No Owner shall (or permit his, her or its Occupants, guests, invitees, employees, agents or contractors to) interfere in any way with play on the golf course (whether in the form of physical interference, noise, harassment of players or spectators, or otherwise). Each Owner (for such Owner and its Occupants, guests and invitees) recognizes, agrees and accepts that: (a) operation of a golf course and related facilities will often involve parties and other gatherings (whether or not related to golf, and including without limitation weddings and other social functions) at or on the golf course and related facilities, tournaments, loud music, use of public address systems and the like, occasional supplemental lighting and other similar or dissimilar activities throughout the day, from early in the morning until late at night; (b) by their very nature, golf courses present certain potentially hazardous conditions, which may include, without limitation, lakes or other bodies of water and man-made or naturally-occurring topological features such as washes, gullies, canyons, uneven surfaces and the like; (c) irrigation of landscaping on a golf course or related facilities may result in water spraying, drifting or blowing onto adjacent or nearby Lots or Parcels; and (d) neither such Owner nor its Occupants, guests and invitees shall make any claim against the Declarant, the Village Association, any committee of the Village Association, any sponsor, promoter or organizer of any tournament or other event, or the owner or operator of any golf course within, adjacent to or near the Village (or any affiliate, agent, employee or representative of any of the foregoing) in connection with the matters described or referenced in (a), (b) and (c) above, whether in the nature of a claim for damages relating to personal injury or property damage, or otherwise.

End of Article 9

## ARTICLE 10

### FHA/VA PROVISIONS

10.1 Approvals During Period of Declarant Control. Notwithstanding any other provision of this Declaration or of any of the other Village Documents to the contrary, during the period: (a) commencing with the earlier of: (i) the date FHA or VA first approves any subdivision in the Village for single family residential loan insurance or guarantee programs offered by FHA or VA; or (ii) the date FHA or VA first insures or guarantees a loan on any Lot within the Village; and (b) ending with the expiration or termination of the Period of Declarant Control:

10.1.1 property which is not included within the Additional Property shall not be annexed to the Property without the prior approval of either FHA or VA (except to the extent such annexation involves only minor adjustments to boundaries of the Property);

10.1.2 neither the Village Common Area nor any part thereof shall be dedicated without the prior approval of either FHA or VA except for: (a) minor adjustments to the boundaries of any Village Common Area or any other portion of the Property; (b) dedications or grants of easements to the public, to any municipal or other governmental agency or entity, or to any public, quasi-public or private utility company, or conveyance or other transfer of portions of the Village Common Area to a Neighborhood Association, all as permitted by Section 3.1.1(a); (c) grants of easements pursuant to Section 3.2; and (d) grants of easements with respect to, or dedications of, Village Common Area situated within the boundaries of a Non-Residential Parcel, if granted, made or approved by the Village Board.

10.1.3 no amendment to this Declaration or to the Village Articles or Village Bylaws shall be effective without the prior approval of either FHA or VA (except to make clerical or technical corrections); and

10.1.4 the Village Association shall not be dissolved, or merged or consolidated with any other entity, without the prior approval of FHA or VA.

10.2 Obtaining Approvals. As to any action required by this Article 10 to be approved by FHA or VA before becoming effective or before being taken, such action shall be submitted to FHA or VA for approval, and if the agency whose approval is requested does not disapprove the same, by written notice to the Village Association, the Declarant or other Person requesting such approval, within thirty (30) days after delivery to such agency of the request for approval, the action in question shall be deemed approved by such agency.

10.3 Definitions. For purposes of this Article 10, the term "FHA" means the Federal Housing Administration (or its successor federal agency), and the term "VA" means the Veterans Administration (or its successor federal agency).

End of Article 10

## ARTICLE 11

### NON-RESIDENTIAL PARCELS

11.1 Annexation of Non-Residential Parcels. The Declarant shall have the right, at its option, exercisable from time to time at any time prior to December 31, 2015, to annex to the Property one or more portions of the Additional Property pursuant to Section 2.2 but, in the written instrument annexing the same to the Property, or in a separate Tract Declaration Recorded at the time of such annexation or thereafter, to designate the property so annexed as a Non-Residential Parcel. Any Non-Residential Parcel so annexed to the Property shall be deemed to be fully a part of the Property, and such Non-Residential Parcel and each Owner and Occupant thereof shall be deemed to be fully subject to this Declaration and all of the Village Documents, except as provided in this Article 11 and except as provided in a Tract Declaration Recorded with respect to such Non-Residential Parcel in accordance with this Article 11. The Declarant shall have no obligation to annex to the Property any portions of the Additional Property (including, without limitation, any portions thereof which are used, or in the future may be used, for non-residential purposes), and the Declarant has made no representation or warranty that it will do so. Portions of the Additional Property may be developed and used for any purposes permitted by applicable law and applicable zoning (including, but not limited to, non-residential purposes) without being annexed to the Property or otherwise subjected to this Declaration or other Village Documents. Without limiting the generality of the provisions of this Section 11.1, it is the Declarant's intent, in reserving to itself the rights, options and privileges in this Article 11, to permit itself the latitude and flexibility to include within the Property parcels devoted to non-residential uses and purposes where, in the Declarant's judgment, doing so would promote the consistent development and maintenance of property in and about the Project, including without limitation Village Common Areas, drainage channels and facilities, and other open space and greenbelt areas, while at the same time limiting, to the extent appropriate in the Declarant's judgment, the effect on such Parcels of provisions of this Declaration and of the other Village Documents more suited for application to residential properties.

11.2 Application of Village Documents. The Declarant may, in the Tract Declaration Recorded with respect to a Non-Residential Parcel, fully exempt that Non-Residential Parcel from such provisions of this Declaration and the other Village Documents as the Declarant sees fit, or modify the effect on that Non-Residential Parcel of one or more provisions of this Declaration and the other Village Documents in such manner and to such extent as the Declarant sees fit. Further, and without limiting the generality of the foregoing, except as and to the extent otherwise expressly provided in the Tract Declaration Recorded with respect to a Non-Residential Parcel, the provisions of Articles 4, 5 and 6 of this Declaration shall not apply to that Non-Residential Parcel. The Declarant may, at its option, provide in the Tract Declaration Recorded with respect to a Non-Residential Parcel for alternative, substitute or modified provisions relating to the use and development of that Non-Residential Parcel. The Declarant may also, in the Tract Declaration Recorded with respect to a Non-Residential Parcel, establish the types and amounts, if any, of Assessments to which such Parcel and its Owner(s) will be subject (or the formula by which such Assessments will be determined, and any formula with respect to, or limits on, increases in such Assessments), and may also, in that Tract Declaration, establish the number of Memberships and votes (if any) to which the Owner(s) of that Parcel will be entitled (and any limitations or restrictions on the right of such Owner(s) to cast such

votes). In addition, the Declarant may, in the Tract Declaration Recorded with respect to a Non-Residential Parcel, impose additional or alternative restrictions or limitations on the rights of the Owner(s) or Occupant(s) of that Non-Residential Parcel (and their respective guests, invitees, employees and customers) to use and enjoy the Village Common Area or any portion(s) thereof.

End of Article 11

**EXHIBIT "A"**

Tract 3d, **FIRST AMENDMENT TO STATE PLAT NO. 27 AMENDED CORE NORTH**, recorded in Book 395 of Maps, page 21, official records of Maricopa County, Arizona;

**EXCEPT** any portion thereof located within the right of way for Thompson Peak Parkway.

**EXHIBIT "B"**

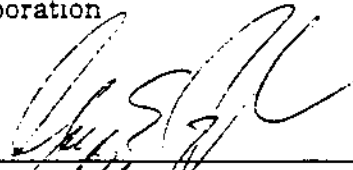
All property depicted on the **FIRST AMENDMENT TO STATE PLAT NO. 27 AMENDED CORE NORTH**, recorded in Book 395 of Maps, page 21, official records of Maricopa County, Arizona;

**EXCEPT** any portion thereof located within the property described in the preceding Exhibit "A."



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

GRAYHAWK RESIDENTIAL, INC., an Arizona corporation

By   
Its \_\_\_\_\_  
\_\_\_\_\_

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

Acknowledged before me this 18 day of October, 1995, by  
Gregg E. Trybus, the \_\_\_\_\_  
of Grayhawk Residential, Inc., an Arizona corporation, on behalf of such entity.

Les J. Storey  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

