

WHEN RECORDED, MAIL TO:
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AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
ESTABLISHING AND GOVERNING
CHERRY HILLS TOWNHOMES HOMEOWNERS ASSOCIATION

A RESIDENTIAL PLANNED UNIT DEVELOPMENT
PHOENIX, AZ

INDEX
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FOR
CHERRY HILLS TOWNHOMES HOMEOWNERS ASSOCIATION

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EXHIBIT "A" - SUBDIVISION PLAT

THIS DECLARATION is made as of the date hereinafter set forth by CHERRY HILLS TOWNHOMES HOMEOWNERS ASSOCIATION INC., (hereinafter referred to as the "Association").

RECITALS

(A) Association is the fee owner of that certain real property situated in the City of Phoenix, County of Maricopa, State of Arizona, and more particularly described as Cherry Hills Townhomes Homeowners Association according to plat recorded in Book 270, page 41 of Maps, records of Maricopa County, Arizona (hereinafter referred to as the "Property") and which is currently subjected to a Declaration of Covenants, Conditions, and Restrictions.

(B) Association wishes to Amend and Restate its Declaration to continue to establish for its own benefit and for the mutual benefit of all future Owners or Occupants of the Property, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein (hereinafter collectively sometimes referred to as the "Restrictions") which shall run with and be a burden upon the Property AND THESE RESTRICTIONS SHALL AMEND AND SUPERSEDE ALL PREVIOUS DECLARATIONS IN THEIR ENTIRETY;

(C) Association intends that the Owners, all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration, which is recorded in furtherance of establishing a general plan of ownership for the Property; and for establishing rules for the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and the quality of life therein;

NOW, THEREFORE, Association, declares as follows:

I
DEFINITIONS

As used herein, unless the context otherwise requires:

Section 1.01. "Association" shall refer to the CHERRY HILLS TOWNHOMES HOMEOWNERS ASSOCIATION INC., whose membership shall include each Owner of a Lot within the Property, and whose function shall be to serve as the governing body for all Owners as provided in Section 4.01. The Association will be incorporated under the name of CHERRY HILLS TOWNHOMES HOMEOWNERS ASSOCIATION, INC., an Arizona non-profit corporation..

Section 1.02. "Association Rules" shall mean and refer to the rules and regulations adopted, amended, and repealed, by the Board pursuant to this Declaration and in furtherance of the Bylaws.

Section 1.03. "Assessments" shall mean the charges against Owners to defray the Common Expenses as well as miscellaneous special Assessments, special Assessments for capital improvements, and special Assessments for the purpose of restoring and reconstructing the Property in the event of casualty, all as provided in this Declaration.

Section 1.04. "Board" shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the governing body of the Association.

Section 1.05. "Building" shall mean and refer to each of the principal structures which are located or constructed on a Lot.

Section 1.06. "Bylaws" shall mean the Bylaws, as amended adopted by the Board for the purpose of regulating the affairs of the Association, as the same may be amended from time to time.

Section 1.07. "Common Expenses" shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area and the Property which are maintained by the Association; (b) deficiencies arising by reason of unpaid Assessments; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; (d) utilities (other than separately metered utilities for the Units), trash pickup and disposal, gardening, pool service, and other related services; (e) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the Board in its discretion; (f) the establishment of reasonable reserves as the Board shall deem appropriate in its discretion; (g) other miscellaneous charges incurred by the Association of the Board pursuant to this Declaration, the Bylaws, or Association Rules in furtherance of the purposes of the Association or in discharge of the duties and powers of the Association.

Section 1.08. "Common Area" shall mean the entire Property, excluding the Lots (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Tracts A, B, C, D, E and F described on the Plat of Cherry Hills Townhomes Homeowners Association recorded in Book 270, page 41 of Maps, records of Maricopa County, Arizona.

Section 1.09. "Lot" shall mean and refer to any plot of land (and the improvements thereon) shown upon any recorded subdivision map of the Property with the exception of the Common Area.

Section 1.10. "Declarant" was NEIDHART ENTERPRISES, its successors and assigns

Section 1.11. "Declaration" shall mean this Declaration including all exhibits attached hereto, which are hereby incorporated by reference, and any and all amendments hereof and supplements hereto.

Section 1.12. "Lender" shall mean: (a) an institutional holder of a first mortgage or first deed of trust on a Lot which is a bank, savings and loan association, insurance company, established mortgage company, or other entity chartered under state or federal law; and (b) any Person who is a holder of a first mortgage or first deed of trust on a Lot.

Section 1.13. "Occupant" shall mean a Person or Persons, other than an Owner, in possession of a Lot or portion thereof.

Section 1.14. "Owner" shall mean the Person or Persons who are vested with record deed of a Lot according to the records of the County Recorder of Maricopa County, Arizona; however, Owner shall not include a Person who holds an interest in a Lot merely as security for the performance of an obligation.

Section 1.15. "Plat" means the plat of survey of the Property and showing thereon twenty-one (21) Lots, each of which is identified by a number. A copy of the Plat is attached hereto as EXHIBIT "A." The original Plat is recorded in Hook 270 of Maps, Page 41, in the records of the County Recorder of Maricopa County, Arizona. "Plat" shall also refer to any additional plat which may be recorded with any Supplemental Declaration.

Section 1.16. "Person" shall mean a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

Section 1.17. "Property" shall mean Lots 1 through 21 and the Common Areas, together with all the Buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

Section 1.18. "Restrictions" shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this Declaration.

Section 1.19. "Supplemental Declaration" shall mean a written instrument recorded in the records of the County Recorder of Maricopa County, Arizona, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

II

CREATION OF THE COVENANTS, CONDITIONS AND RESTRICTIONS

Section 2.01. Submission.

The Association hereby submits and subjects the Property to this Declaration, and in furtherance thereof, makes and declares the Restrictions contained in this Declaration, and hereby declares and agrees that the Property and all of the Lots subjected to this Declaration shall be held, conveyed, transferred, sold, leased, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns.

III

DESCRIPTION OF THE PROPERTY; MAINTENANCE

Section 3.01. Name.

The Property shall be known as "CHERRY HILLS TOWNHOMES HOMEOWNERS ASSOCIATION."

Section 3.02. Maintenance by Owners.

Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs, and replacements of the Building within his Lot, and shall have the obligation to maintain such Lot and all improvements thereon in good condition and repair. Such obligation shall include, without limitation, the following (a) the maintenance of all doors and roofs; (b) paint, repair, replacement, and care of all exterior Building surfaces (the original color scheme of the Buildings shall be maintained except as may be authorized pursuant to Article XI), window and door glass and related screens (including sliding glass doors for patios or

balconies) and the interior and exterior cleaning of such window and door glass; and (c) the maintenance of, in an open and unobstructed condition, all sewer and drainage pipes, water and other utility lines serving an Owner's respective Lot between the points at which the same enter the respective Lot. An Owner shall also keep his parking, patio or balcony area, and his storage space or spaces in a clean, sanitary, and attractive condition.

Section 3.03. Utilities.

All utilities for individual Lots, including water and sewer service charges, will be metered separately to each Lot and such utility charges shall be the responsibility of the respective Owners.

Section 3.04. Maintenance by the Association.

The Association shall maintain and care for the Common Area and the improvements thereon and shall further maintain and care for all above-ground landscaping on the Property, including that located on the front yard of Lots provided such is readily accessible to maintenance crews. Owners shall be responsible for maintaining and caring for all landscaping on the back and side yard of Lots. In the event an Owner would like to change or modify the front yard Lot landscaping in anyway, the Owner must obtain the prior written approval of the Association; if approval is not given, the Association shall not be responsible for the care or maintenance of the front yard Lot. In the event an Owner of any Lot shall fail to maintain such Lot and the Building thereon in a manner satisfactory to the Board, the Association, after approval by two-thirds (2/3) veto of the Board, shall have the right, through its agents, manager and/or employees, after compliance with the provisions of Section 15.17, and upon 48 hours written notice except for in cases of emergency, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the Building and any other improvements erected thereon. The cost of such maintenance and repair shall be the personal obligation of the Owner payable upon demand and may be enforced in any manner in law or equity.

IV
MANAGEMENT

Section 4.01. Association.

The Association will be formed to serve as the governing body for all Owners and shall make provisions for the maintenance, repair, replacement, administration and operation of the Common Area, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as Determined by the Board of Directors, or provided in the Declaration, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the Declaration and the Bylaws.

Section 4.02. Membership.

Each Owner shall be a member of the Association so long as he shall be an Owner and such membership shall automatically terminate when he ceases to be an Owner, and upon the transfer of such ownership interest, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association.

Section 4.03. Voting.

The Association shall have one class of voting membership.

Class A. Class A Members shall be all Owners. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person owns an interest in a Lot, each such Person shall be a member of the Association but the vote for such Lot shall be exercised as the co-Owners themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Association shall not be required to recognize the vote or written assent of any such co-Owner except the vote or written assent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

Section 4.04. Board of Directors.

The governing body of the Association shall be the Board of Directors elected pursuant to the Bylaws. The Board shall consist of three (3) members. .The Board may fill vacancies in its membership for the unexpired portion of any term. Except as otherwise provided in this Declaration, the Bylaws, or Association Rules, the Board may act in all instances on behalf of the Association. The Board shall adopt the Bylaws and Association Rules

Section 4.05. Qualification of Directors.

Each Director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership, or trust, a Director may be an officer, member, manager partner, trustee or beneficiary of such Owner). To be eligible to run for the Board of Directors the member shall be in good standing. To be in good standing the owner must be current on assessments and other amounts due to the Association as articulated in Section 5.01 of this Declaration, and shall not be in violation of the governing documents.

Section 4.06. Independent Manager.

The Board may employ a responsible person or entity as manager to manage, operate and maintain the Common Area, with all of the administrative functions and such other powers and duties as the Board may delegate from time to time and for such fees as the Board may establish consistent with other provisions of this Declaration. Any agreement for management of the Property shall be in writing and shall provide for termination by either the Association or the management agent for cause and termination without cause without payment of a

termination fee upon written notice of not less than thirty (30) nor more than ninety (90) days and the term of such agreement shall not exceed one (1) year, renewable by written agreement of the parties for successive periods of one (1) year.

Section 4.07. Action by Owners.

The Board may not act on behalf of the Association to amend or terminate this Declaration.

Section 4.08. Annual Meeting.

The annual meeting shall be held as provided in the Bylaws.

Section 4.09. Right of Association to Enter Lots.

The Association, acting through the Board or its duly authorized agent, shall have the right at all times, upon 48 hours written notice and at any time in case of an emergency), to enter upon or in any Lot (the right to enter a building is reserved) to make repairs, or to abate any infractions or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner.

Section 4.10. Reserve Fund.

The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those Common Areas that must be replaced on a periodic basis, and such reserve shall be funded as part of monthly Assessments.

Section 4.11. Association Rules.

The Board shall adopt Association Rules in furtherance of the Bylaws for the regulation and operation of the Property, including any recreational facilities. The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Areas of Association Responsibility, (iii) the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas, or (iv) any other subject within the jurisdiction of the Association. Except as limited herein, the Association Rules may be adopted, amended and repealed by a majority of the members of the Board.

The Board shall have the right to exclude from the use of the recreational facilities any Owner who is delinquent in the payment of any Assessment levied in accordance with ARTICLE V hereof.

Section 4.12. Architectural Control.

No building, fence, wall, tower, awning, patio enclosure, or other structure of any kind or character shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition thereto, or change or alteration therein, be made until the plans and specifications showing the nature, kind, color, shape, height, materials, location and other material attributes of the same shall have been submitted to and approved in writing by the Board as to harmony of external design and location in relation to the Property as a whole and to surrounding structures and topography. The Board of Directors shall have the authority to develop Rules and Regulations regarding antenna and satellite dishes, however, such regulations shall not conflict with Federal Law.

V

COVENANT FOR ASSESSMENTS

Section 5.01. Creation of Lien and Personal Obligation for Assessments.

Each Owner, of any Lot, by acceptance of a deed or other instrument creating in such owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree to pay to the Association, such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, court costs and other costs of collection as hereinafter provided, shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment becomes due.

Section 5.02. Purpose of Assessments.

The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, the management, maintenance, care, preservation, and protection of the Property, enhancing the quality of life in the Property and the value of the Property including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common area, or in furtherance of any other duty or power of the Association.

Section 5.03. Regular Assessments.

Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall distribute to each Owner a pro forma operating statement or budget for the upcoming year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board shall, at that time, determine the amount of the regular Assessment to be paid by each Owner. Each Owner shall thereafter pay to the Association his regular Assessment in equal monthly installments on the first day of each month. In the event the Board shall determine that the estimate of the total charges for the

current year is, or will become, inadequate to meet all the Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses, and determine the revised amount of the regular Assessment against each Owner, and the date or dates when due. The Board of Directors shall have the authority to set the assessment rate. Provided however, that the association shall not impose a regular assessment that is more than five per cent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association.

Section 5.04. Capital Improvement Assessments.

In addition to regular Assessments, the Board may, in any fiscal year, levy a capital improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto. The Board shall not impose a capital improvement Assessment without the approval of two-thirds (2/3) of the votes of the Members who are in good standing voting at a meeting duly called for this purpose. To be in good standing the owner must be current on assessments and other amounts due to the Association as articulated in Section 5.01 of this Declaration, and shall not be in violation of the governing documents. All amounts collected as capital improvements Assessments may only be used for capital improvements and shall be deposited by the Board in a separate account to be held in trust for such purposes and said funds shall not be commingled with any other funds of the Association.

Section 5.05. Uniform Rate of Assessment.

All Assessments (other than special Assessments) shall be fixed at an equal amount for each Lot based upon a fraction where the numerator is one and the denominator is the number of Lots in the Property.

Section 5.06. Certificate of Payment.

The Association shall, after receipt of written demand, furnish to any Owner liable for Assessments a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Lot have been paid and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 5.07. Special Assessments.

Special Assessments shall be levied by the Board against a Lot and its Owner to reimburse the Association for:

- (a) costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Declaration, the Bylaws, or Association Rules;
- (b) any other charge designated as a Special Assessment in this Declaration, Bylaws, or Association Rules; and
- (c) attorneys' fees, interest and other charges relating thereto as provided in this Declaration.

In the event the Association undertakes to provide materials or services which benefit individual Lots and which can be accepted or rejected by individual Owners, an Owner, in accepting such materials or services, agrees that the costs thereof shall be a special Assessment.

Section 5.08. Date of Commencement of Assessments.

Regular and other Assessments as to Lots within the Property shall commence the date of ownership within the Association.

Section 5.9. No Offsets.

All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation: (i) a claim that the Association is not properly exercising its duties and powers as provided in this Declaration; or (ii) an Owner has made or elects to make no use of the recreational facilities.

Section 5.10. Notice and Quorum for any Action Authorized under Section 5.04.

Written notice of any meeting called for the purpose of taking any action authorized under 5.04 hereinabove, shall be sent to all Members not less than ten (10) days, nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members in person or by absentee ballot entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

VI
EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES

Section 6.01. Delinquency.

Any Assessment which is not paid when due is delinquent. Whenever an Assessment is delinquent the Board may, at its option, invoke any or all of the sanctions provided for herein.

Section 6.02. Late Charge.

If any Assessment is not paid within 15 days after it becomes due and payable, the Owner shall be obligated to pay the late charge then provided for in the Bylaws. The amount of such late charge until paid shall constitute part of the Assessment lien as provided for in Section 5.01 of this Declaration.

Section 6.03. Interest.

If any Assessment is not paid within thirty (30) days after it becomes due and payable, interest at the rate of twelve percent (12%) per annum may be assessed on the amount owing from the date due until such time as it is paid.

Section 6.04. Action at Law.

The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay same or, upon compliance with the notice provisions herein, to foreclose the Assessment lien; provided, however, that the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise the other. The costs of preparing and filing the complaint shall be assessed against the delinquent Owner and his Lot and all attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and/or late charges, if appropriate) in the event a judgment is obtained by the Association. Each Owner vests in the Association or its assigns the right and power to bring actions at law and/or lien foreclosures against such Owner for the collection of delinquent Assessments.

Section 6.05. Foreclosure Sale.

Any foreclosure sale provided for in this Declaration is to be conducted in accordance with applicable provisions relating to the foreclosure of realty mortgages in the State of Arizona.

Section 6.06. Suspension of Votes.

The Board shall suspend for the entire period during which an Assessment remains delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association. If an Owner disputes the Board's decision to suspend an Owner's right to vote,

the Owner may submit a written request for a hearing in front of the Board of Directors. The Board of Directors shall set forth the procedure and time period for an Owner to request a hearing.

Section 6.07. Suspension of Recreational Privileges.

The Board is authorized to suspend for the entire period during which an Assessment remains delinquent the obligated Owner's right to the use of any recreational facilities of the Property.

VII
EASEMENTS

Section 7.01. General Easements to Common Area.

Subject to this Declaration and the Association Rules, non-exclusive reciprocal easements are hereby reserved and created for the purpose of support, ingress and egress, access, use and enjoyment in favor of each Owner and their guests, tenants and invitees, upon, across, over, under and through the Common Area, including the use of all pipes, wires, ducts, flues, cables, conduits, and public utility lines and recreational facilities, which easements shall be appurtenant to each Lot. The Association, acting through the Board or its authorized agent, and public utility companies providing service to the Property, shall have non-exclusive easements with the right of access to each Lot to make inspections, to remove violations, to maintain, repair, replace or effectuate the restoration of the Common Area accessible in such Unit; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with- 48 hour prior notification, unless emergency situations demand immediate access.

Section 7.02. Utility Easements.

There is hereby created a blanket easement upon, across, over and under the Property for reasonable ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity. By virtue of this easement it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary equipment on said property and to affix and maintain the necessary electrical and/or telephone wires, conduits, and circuits on, above, across and under the Common Area, including buildings located on Lots. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially programmed and approved by the Developer of the Property or thereafter approved by said Developer or the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

Section 7.03. Easements for Encroachments.

If any portion of the Common Area now encroaches upon any Lot, or if any Lot or the improvements thereon now encroaches upon any other Lot or the Common Area, or if any such encroachment shall occur hereafter as a result of the manner in which the Buildings have been constructed or due to settling, shifting, alteration, replacement, repair, or restoration by Declarant or the Association, a valid easement for encroachment shall exist so long as the Buildings stand.

Section 7.04. Party Walls and Fences.

Those Owners who have a common wall or fence adjoining their Lots and such a wall or fence dividing the Lots upon which their homes are constructed, shall equally have the right to the use of such wall or fence except that each shall have the exclusive right to that use of the interior surface of the wall or fence on his side. Neither Owner shall use any portion of the wall or fence so as to interfere with the use and enjoyment of the other Owner. In the event that any portion of such wall or fence, except the interior surface of one side, is damaged or injured from any cause, other than the act or negligence of either party, it shall be repaired or rebuilt at their joint expense.

VIII
USE RESTRICTIONS

Section 8.01. Residential Use.

All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances and (iii) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms “business” and “trade” as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended or does generate a profit, or (c) a license is required for such activity.

Section 8.02. Signs.

No signs of any kind other than the following shall be displayed to public view from any portion of the Property without the written approval of the Board.

- (a). one 'for sale' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) and a sign rider (not to exceed 6 x 24 inches) located on an Owner's Lot,
- (b). one 'for rent' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) located on an Owner's Lot;
- (c). one 'open house' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) located on an Owner's Lot;
- (d). political signs earlier than 71 before the day of an election and later than 3 days after an election day and the signs shall not exceed an aggregate total of nine square feet located on an Owner's Lot;
- (e). cautionary signs regarding children in accordance with the Planned Community Act;

The signs are professionally manufactured or produced.

Section 8.03. Nuisance.

No noxious or offensive activity shall be carried on upon the Property, nor shall any activity which might be or become an annoyance or nuisance to Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance. No Owner or Occupant shall engage in activity within the Property in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. The Board of Directors shall have the sole authority to determine whether a nuisance exists.

Section 8.04. Temporary Structures.

No structure or building of a temporary character, including a tent or shack, shall be placed upon the Property or used therein unless the same and its proposed use are approved by the Board.

Section 8.05. Parking.

Unless otherwise permitted by the Board, no motor vehicle (including a motorcycle), trailer, camper, boat, or similar item, and no bicycle, shall be permitted to remain upon the Property unless parked or placed within the Property in spaces designated for such use; provided, however, temporary parking of motor vehicles shall be permitted. For purposes hereof, "temporary parking" shall mean parking of vehicles belonging to invitees of owners and Occupants, parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of goods and services to the Association or to the Owners and Occupants as well as parking of vehicles belonging to and being used by Owners, Occupants and invitees for loading and unloading purposes. The Board of Directors shall have the authority to

designate visitor parking. Except for temporary parking, no buses, vans, trucks, or other vehicles having a carrying capacity in excess of 3/4 tons or designed for commercial purposes shall be maintained or parked upon the Property except with the prior written approval of the Board, and only service vehicles shall be permitted to be parked on the street. The Board may adopt Association Rules relating to the admission and temporary parking of vehicles within the Property, including the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments. The Board of Directors shall have the authority to cause any vehicle in violation of the Declaration to be towed or immobilized.

Section 8.06. External Fixtures.

Without prior written approval from the Board of Directors, no external items such as, but not limited to, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, walls, landscaping and planting, other than those provided in connection with the original construction of the Property, and any replacements thereof, and other than those approved by the Board and any replacements thereof, shall be constructed, erected or maintained on the Property, including any Buildings thereof. The Board of Directors shall have the authority to develop Rules and Regulations regarding the placement, installation and use of antenna and satellite dishes provided that the Rules shall not conflict with Federal Law. The Association may maintain in effect or cause to be maintained in effect a central antenna system or systems, which shall provide connections to each Lot via underground or internal wall wiring, or a combination thereof.

Section 8.07. Window Covers.

Only curtains, blinds, drapes and shades may be installed as window covers. No window shall be covered by paint, foil, sheets or similar items. The Board may adopt Association Rules regulating the type, color and design of the external surface of window covers.

Section 8.08. External Laundering.

Unless otherwise permitted by the Board, external laundering and drying of clothing and other items is prohibited.

Section 8.09. Outside Speakers and Amplifiers.

No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of any Building without the prior written approval of the Board.

Section 8.10. Repairs.

No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Property. Notwithstanding the foregoing, minor tune-ups for motor vehicles and the changing of motor oil and spark plugs in motor vehicles are permitted if such work is performed within the garage area.

Section 8.11. Unsightly Items.

All rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Lots and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Lots, shall be prohibited upon any lot unless obscured from view of adjoining Lots and Common Area. Trash and garbage not disposed of by equipment contained within the Lots shall be placed in containers by Owners and Occupants for removal from the Property in accordance with Association Rules applicable thereto adopted by the Board. The Board may adopt rules applicable to the provisions of this Section and their enforcement, including the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments.

Section 8.12. Animals.

No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in any Lot or elsewhere within the Property except that orderly domestic dogs cats, fish, and domestic birds inside birdcages may be kept as household pets within any Lot. Anyone becoming an Owner on or after the date this Declaration is recorded shall be permitted to have up to four commonly accepted household pets; any Owner desiring to have more than four commonly accepted household pets must obtain the prior written approval of the Board of Directors. No animals may be kept, bred or raised therein for commercial purposes, or in unreasonable quantities. Unless otherwise permitted by the Board, dogs must be carried or be on leashes and accompanied by an adult except when confined within the Lots. Pets cannot be kept or leashed on balconies, patios or courtyards or otherwise leashed to any stationary object on the common areas. No animal is permitted in or on any community facilities. The owners of pets shall be obligated to remove all excrement of their pets from landscaping and other exterior portions of the Common Area. The Association shall have the right to specify from time to time special areas in which pets must be exercised. Further, the Association shall have the right to prohibit maintenance of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other Owner. Each person bringing or keeping a pet upon the Property shall be absolutely liable to each and all other Owners, their family members, guests, invitees, for any damage to persons or property caused by any pet brought upon or kept upon the Property by such persons or by members of his family, his guests or invitees. All pets shall be licensed and inoculated as required by law. The Board may establish reasonable fees for registration of pets not to exceed the additional costs incurred by the Association resulting

from the presence of such pets. Further, no owner shall be permitted to feed feral animals or do anything to create or compound the presence of feral animals within the Association. In addition to any and all legal remedies available, the Board of Directors shall have the authority to levy monetary penalties, after providing both notice and an opportunity to be heard, for Owners that are in violation of this Section.

Section 8.13. Leases.

Any agreement for the leasing or rental of a Lot or portion thereof (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Association Rules. Said lease shall further provide that any failure by the Occupant thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. With the exception of a Lender in possession of a Lot following a default in a first mortgage or first deed of trust, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, No Owner shall be permitted to lease his Lot for transient or hotel purposes, which shall be defined as rental for any period of less than thirty (30) days. Any Owner who shall lease his Lot shall be responsible for assuring compliance by the Occupant with this Declaration, the Bylaws and the Association Rules.

Section 8.14. Rules and Regulations.

The Association, acting through the Board, shall have the power to make and adopt reasonable Association Rules with respect to activities which may be conducted on any part of the Property. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate such Association Rules shall be conclusive.

IX
INSURANCE

Section 9.01. Authority to Purchase.

The Board shall have the authority to obtain and shall obtain the insurance provided for in this Article. The cost of insurance will be included as part of each Owner's assessment.

Section 9.02. Hazard Insurance.

The Board shall obtain a master or blanket policy of property insurance on the entire Common Area insuring the Common Area against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and against loss or damage by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage. Such master policy of property insurance shall be in a total amount of insurance equal

to 100% of the current replacement cost, exclusive of land, excavations, foundations and other items normally excluded from such property policies. Such master policy of property insurance shall contain an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement, together with such endorsements as may be satisfactory to any Lender.

Section 9.03. Comprehensive Public Liability Insurance.

The Board shall obtain comprehensive general liability insurance insuring the Association, , the agents and employees of the Association, the Owners and Occupants and the respective family members, guests and invitees of the Owners and Occupants, against liability incident to the ownership or use of the Common Area. The limits of such insurance shall not be less than \$1,000,000.00 covering all claims for death of or injury to any one person and/or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner or Occupant. Such insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles, and liability for the property of others. Such insurance must provide that, despite any provisions giving the carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the approval of the Association. The Board shall adjust the amount of the insurance carried under this Section from time to time.

Section 9.04. Workmen's Compensation Insurance.

The Board shall purchase and maintain in effect workmen's compensation insurance for all employees of the Association to the extent that such insurance is required by law.

Section 9.05. Fidelity Insurance.

The Board shall obtain fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible for handling the funds of the Association. Such fidelity bonds shall name the Association as obligee and shall be written in an amount equal to one hundred fifty percent (150%) of the estimated current annual Common Expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 9.06. Premiums.

Premiums upon insurance policies purchased by the Board on behalf of the Association shall be paid by the Association as part of the Common Expenses.

Section 9.07. Policy Provisions.

(a) Any insurer that has issued an insurance policy to the Association under this Article shall also issue a certificate or memoranda of insurance to the Association and, upon request, to any Owner or Lender.

(b) The named insured under any policy of insurance shall be the Association, as trustee for the Owners, or its authorized representative, including any trustee with which the Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall be referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under the policies. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of purchasing and maintaining insurance required by this Article, and adjustment of all losses related thereto, including: the collection and appropriate disposition of all insurance proceeds, the negotiation of all losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to administer such insurance. The Association shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their Lenders, as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

(c) Insurance coverage may not be brought into contribution with insurance purchased by the Owners.

(d) Coverage must not be limited by (i) any act or neglect by Owners or Occupants which is not within control of the Association; or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

(e) Coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association and all Lenders, and to any Owner to whom a certificate has been issued.

(f) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, Owners, Occupants and their respective agents and employees, and any defenses based on co-insurance or on invalidity arising from acts of the insured.

Section 9.08. Supplemental Insurance.

The Board may obtain such other policies of insurance in the name of the Association as the Board deems appropriate to protect the Association and Owners, including, without limitation, errors and omissions insurance for officers and directors of the Association. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit developments established by the Federal National Mortgage Association and the Government National Mortgage Association, so long as either is a Lender or an Owner of a Lot, except to the extent such coverage is not available or has been waived in writing by the Federal National Mortgage Association or the Government National Mortgage Association. The foregoing notwithstanding, the Association shall maintain such flood insurance as may be required from time to time by the Veterans Administration.

Section 9.09. Annual Insurance Report.

The Board may obtain a written report by a reputable independent insurance broker or consultant setting forth the existing insurance obtained pursuant to this Article and stating whether, in the opinion of such broker or consultant, the insurance complies with the requirements of this Article. Such report shall also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar Lots. The Board shall be fully protected in relying on the written report furnished pursuant to this Section provided reasonable care and prudence were exercised in selecting such independent insurance broker or consultant.

X

DESTRUCTION OF IMPROVEMENTS

Section 10.01. Automatic Reconstruction.

In the event of partial or total destruction of any portion, of the Common Area within the Property, the Board shall promptly take the following action:

(a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds.

(b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer,

(c) If the Board determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and/or a special Assessment equal to twenty-five percent (25%) or less of the then aggregate annual regular Assessments for all Lots will completely cover the estimated cost of reconstruction, then the Board shall cause notice to be sent to all Owners and to all Lenders encumbering Lots within the Property setting forth such findings and informing said Owners and Lenders that the Board intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing not less than twenty percent (20%) of the voting power of the Association object in writing to such reconstruction as indicated in such notice, the Board shall call a special meeting of the Owners pursuant to Section 10.02. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board shall levy an Assessment to cover costs of reconstruction in excess of insurance proceeds and available reserves, and such reconstruction Assessment shall be levied against all owners.

(d) If the Board in good faith determines that none of the bids submitted under this Section reasonably reflects the anticipated reconstruction costs, the Board shall continue to attempt to obtain an additional bid which it determines reasonably reflects such costs. Such

determination shall be made by the Board as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board shall immediately call a meeting of the affected Owners pursuant to Section 10.02 hereof.

Section 10.02. Reconstruction by Vote.

If reconstruction is not to take place pursuant to Section 10.01 hereof, as soon as practicable after same has been determined, the Board shall call a special meeting of the Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than 10 days and not more than 50) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent representing not less than seventy-five percent (75%) of the voting power of the Association determine not to proceed with such reconstruction, reconstruction must take place and the Board shall levy an Assessment to cover costs of reconstruction in excess of insurance proceeds and available reserves, and such reconstruction Assessment shall be levied against all Owners.

Section 10.03. Procedure for Minor Reconstruction to Common Area.

If the cost of reconstruction is equal to or less than ten percent (10%) of the face amount of insurance then carried under the Association's hazard insurance policy, then the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Common Area in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes, or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.

Section 10.04. Procedure for Major Reconstruction to Common Area.

If the cost of reconstruction is greater than ten percent (10%) of the face amount of insurance then carried under the Association's hazard insurance policy, all insurance proceeds, together with such amounts from available reserves or special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to a bank or savings and loan association located in Maricopa County, Arizona, whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or the successor to either agency, as designated by the Board, as trustee (hereinafter called the "Insurance Trustee") for all Owners and Lenders. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Board. Disbursement of such funds shall be made only upon the signatures of two members of the Board and upon the terms and conditions provided in this Section. As soon as practicable after notification of the receipt of

insurance proceeds by the Insurance Trustee, the Board shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Common Area according to the original plans and specifications of said improvements or, if the Board determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes, or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors of a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Maricopa County, Arizona. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Board shall furnish to the Board before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board. The Board shall employ a Licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

Section 10.05. Negotiations with Insurer.

The Board shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to any other portion of the Common Area. Any settlement made by the Board in good faith shall be binding upon all Owners and Lenders.

Section 10.06. Repair of Building.

Installation of improvements to, and repair of any damage to, the interior of a Lot shall be made by and at the individual expense of the Owner of that lot using available insurance proceeds. If the improvements are not rebuilt, the Owner shall be required to clear the Lot as soon as reasonably possible after the destruction of the improvements.

Section 10.07. Priority.

Nothing contained in this Article shall entitle an Owner to priority over any Lender under a loan encumbering his Lot as to any portion of insurance proceeds allocated to such Lot.

XI
EMINENT DOMAIN

Section 11.01. Taking of the Common Area.

If the portion of the Property taken by eminent domain, or sold under threat thereof, shall not be comprised of, or include, any Lot, the board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the Property so taken.

Section 11.02. Taking of Entire Property.

In the event the Property in its entirety is taken by eminent domain, or sold under threat thereof, the Board shall distribute the award (after deducting therefrom fees and expenses related to the condemnation proceedings including, without limitation, fees for attorneys, appraisers and court costs) to the Owners and such award shall be apportioned among the owners in accordance with the judgment if such judgment of condemnation provides for apportionment, and if no apportionment is made, the Board shall distribute the award to Owners in the same proportion as the Owner's respective fractional interest in the Common Area based upon the square footage of the Lot as to the square footage of all Lots: provided, however, the Board shall first apply the award, as ultimately distributable to each Owner, to the payment of any mortgage, deed of trust or other encumbrance or lien of record with respect to such Lot.

XII
RIGHTS OF LENDERS

Section 12.01. Priority of Lenders.

No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Lot, but all of said Restrictions shall be binding upon and effective against any Owner whose title to a Lot is derived through foreclosure or trustee's sale, or otherwise.

Section 12.02. Relationship with Assessment Liens.

(a) The lien provided for in ARTICLE V for the payment of Assessments shall be subordinate to the lien of any first mortgage or first deed of trust which was recorded prior to the date any such Assessment becomes due.

(b) If any Lot which is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration or any personal obligation

for said charges as shall have accrued up to the time of any foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to such foreclosure.

(c) Without limiting the provisions of subsection (b) of this Section, any Lender who obtains title to a Lot by reason of any foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrued prior to the time such Lender or purchaser takes title to such Lot, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Lots within the Property; provided, however, such reallocation is approved by the vote of two-thirds (2/3) of the votes of each class of Members who are voting at a meeting duly called for such purpose. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership of the Association shall constitute a quorum. If a Lender or purchaser acquires title to a Lot pursuant to this Section but the lien for Assessments prior to the time such Lender or purchaser who acquired title has not been extinguished by the process by which such Lender or purchaser acquired title to the Lot, said lien shall be void, and upon request of said Lender or purchaser, the lien shall be released in writing by the Association.

(d) Nothing in this Section shall be construed as releasing any Person from his personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.

XIII

LIMITATIONS UPON PARTITION AND SEVERANCE

Section 13.01. No Partition.

The right to partition the Property is hereby suspended, except that the right to partition shall revive and the Property may be sold as a whole when the conditions for such action set forth in ARTICLE X dealing with Destruction of Improvements, and ARTICLE XI dealing with Eminent Domain have been met; provided, however, nothings contained in this Section shall be construed as limiting partition by joint Owners, of one or more Lots as to individual ownership of such Lots.

Section 13.02. No Severance.

The elements of a Lot and other rights appurtenant to the ownership of a Lot, including exclusive easements over the Common Area, if any, are inseparable, and each Owner agrees that he shall not, while this Declaration is in effect, make any conveyance (excluding leases of individual dwelling units within a Lot) of less than an entire Lot and such appurtenances.

Section 13.03. Proceeds of Partition Sale.

If an action is brought for the partition of the Property by sale, whether upon the occurrence of an event of destruction and a decision not to reconstruct or the taking of all or a portion of the Property by eminent domain, Owners shall share in the proceeds of such sale in

the same proportion as their interests in the Common Area as heretofore described, but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Lots within the Property so encumbered shall extend to each applicable Owner's interest in the proceeds of such partition and sale. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment of any Assessment lien or lien of a Lender encumbering such proceeds.

XIV
GENERAL PROVISIONS

Section 14.01. Enforcement.

The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages, attorney fees, and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and Association Rules and any respective amendments thereto.

Section 14.02. No Waiver.

Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

Section 14.03. Cumulative Remedies.

All rights, options and remedies of, the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

Section 14.04. Severability.

Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or Association Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein which shall remain in full force and effect.

Section 14.05. Covenants to Run with the Land; Term.

The Restrictions and other provisions of this Declaration shall run with and bind the Property as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns.

Section 14.06. Construction.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 14.07. Gender and Number.

Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

Section 14.08. Nuisance.

The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or Association Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

Section 14.09. Attorneys' Fees.

In the event the Association brings any action is instituted to enforce any of the provisions contained in this Declaration, the Bylaws, or Association Rules, the Association shall be entitled to recover from the other party, whether or not suit is filed.

Section 14.10. Notices.

Any notice to be given to an Owner, a Lender, or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:

(a) Notice to an Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Board for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail shall be deemed delivered 72 hours after such mail deposit.

(b) Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Board for the

purpose of notice or, if no such address shall have been furnished, to any office of the Lender in Maricopa County, Arizona, or if no such office is located in Maricopa County, to any office of such Lender. Any notice so deposited in the mail shall be deemed delivered 72 hours after such mail deposit.

(c) The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, or to any Lender or Lenders, to the address or addresses for the giving of notice pursuant to this Section, shall be deemed conclusive proof of such mailing.

(d) Notice to the Association shall be delivered by first class United States mail, postage prepaid, addressed as set forth below until the Association shall give notice of a different address:

Cherry Hills Townhomes Homeowners Association, Inc.
3612 W. Dunlap Avenue, Suite K
Phoenix AZ 85051

Any notice so deposited in the mail shall be deemed delivered 72 hours after such mail deposit.

Section 14.11. Effect of Declaration.

This Declaration is made for the purposes set forth in the recitals in this Declaration and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or Association Rules are determined to be unenforceable in whole or in part or under certain circumstances.

Section 14.12. Personal Covenant.

To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot, other Owners or the Association, such personal covenant shall terminate and be of no further force or effect from and after the date when a Person ceases to be an Owner except to the extent this Declaration provides for personal liability with respect to the Assessments incurred during the period a Person is an Owner.

Section 14.13. Nonliability of Officials.

To the fullest extent permitted by law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence if such Board member or officer acted in good faith within the scope of his duties.

Section 14.14. Transfer Fee.

(a) Except as provided in the Subsection (b), each Person or entity who/that purchases or otherwise becomes the Owner of a Lot on or after this declaration is recorded whether by Deed, by a Trustee's deed upon Sale, by a Deed in Lieu of Foreclosure, or any similar means, on or after the recording date of this amendment shall pay to the Association, immediately upon becoming the Owner of the Lot, a transfer Fee in an amount equivalent to three months assessments.

(b) No transfer Fee shall be payable with respect to: (i) the transfer or conveyance of a Lot by device or intestate succession; (ii) a transfer or conveyance of a Lot for estate planning purposes; or (iii) a transfer or conveyance to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment for the transfer Fee in which event a transfer Fee shall be payable with respect to such transfer or conveyance.

(c) All transfer Fees shall be deposited in a separate account, not commingled with any other funds of the Association, and shall be deemed a contribution to the capital of the Association. Transfer Fees shall be non-refundable and shall not be considered as an advance payment of assessments.

(d) Transfer Fees shall be exclusively used by the Association as required by Arizona Revised Statute 33-442 for the construction or installation of buildings on the common area or for additions, repairs, maintenance or other improvements to existing buildings or other improvements on the common area. All of the expenditures of capital contribution fees as herein provided are hereby deemed and shall be construed to touch and concern the land which is appurtenant to the title of each and every Lot.

Section 14.15. Owner Default in Maintenance.

If an Owner fails to so maintain his Lot or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Property, or if an Owner shall fail to observe any covenant or restriction imposed on such Owner by the terms of the Declaration, then the Board shall be authorized to take action set forth herein this Declaration.

In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, The Association shall have the right after notice and opportunity to be heard, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board. The monetary penalty shall be the Owner's personal

obligation. The Association shall also have the option to pursue any action in law or equity against the Owner for violations of this Declaration, the Bylaws, or Rules and Regulations which may include filing an injunctive relief lawsuit in the Superior Court of Maricopa County, Arizona.

The Owner shall be responsible for any attorney fees incurred under this Section in the event a judgment is obtained by the Association.

Section 14.16. Use of Funds Collected by the Association.

All funds collected by the Association, including Assessments and contributions to the Association paid by Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for non-profit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for, and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

Section 14.17. Conflicting Provisions.

In the case of any conflict between this Declaration and the Bylaws, or Association Rules, this Declaration shall control.

Section 14.18. Amendments.

Subject to the other provisions of this Declaration, this Declaration may amended by any group of Owners representing not less than 51% of the Lots in good standing within the Property. To be in good standing the owner must be current on assessments and other amounts due to the Association as articulated in Section 5.01 of this Declaration, and shall not be in violation of the governing documents.

An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved, and when the amendment has been recorded in the office of the County Recorder of Maricopa County, Arizona.

IN WITNESS WHEREOF, Association has executed this Declaration as of this _____ day of _____, 2014.