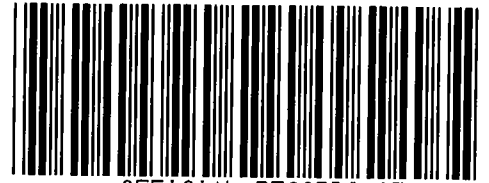


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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SUN CITY GRAND**

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<u>Exhibit</u>	<u>Subject Matter</u>
"A"	Land Initially Submitted
"B"	Intentionally Deleted
"C"	Initial Use Restrictions
"D"	Rules of Arbitration

401419.7

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SUN CITY GRAND

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SUN CITY GRAND ("Declaration") is made this 28th day of ~~August~~^{July}, 2006, by Del Webb Home Construction, Inc., an Arizona corporation (hereinafter referred to as the "Declarant").

WHEREAS, on July 11, 1996 that certain Declaration of Covenants, Conditions and Restrictions for Sun City Grand (the "Declaration") was recorded at Instrument No. 96-0491079 in the offices of the Recorder of Maricopa County, Arizona; and

WHEREAS, on January 31, 1997 that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Sun City Grand was recorded at Instrument No. 97-0064711 in the offices of the Recorder of Maricopa County, Arizona (the "First Amendment"); and

WHEREAS, on April 15, 2004, that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Sun City Grand was recorded at Instrument No. 2004-0400244 in the offices of the Recorder of Maricopa County, Arizona (the "Second Amendment"); and

WHEREAS, on February 24, 2005 a Notice of Amendment to Exhibit "C" – Initial Use Restrictions for Declaration of Covenants, Conditions and Restrictions for Sun City Grand was recorded at Instrument No. 2005-225302 in the offices of the Recorder of Maricopa County, Arizona (the "Exhibit C Amendment"); and

WHEREAS, the Declarant deems it to be in the best interest to amend and restate the Declaration in its entirety; and

WHEREAS, pursuant to the terms of the Declaration, the Declaration may be amended by the Declarant; and

WHEREAS, the Declarant has consented to adopt the amendments as set forth below;

NOW THEREFORE, the Declaration, as amended by the First Amendment, the Second Amendment and the Exhibit C Amendment is hereby amended and restated in its entirety as follows:

Declarant is the owner of the real property described in Exhibit "A," which is attached hereto and incorporated herein by this reference. This Declaration imposes upon the Properties (as defined in Article I) mutually beneficial restrictions under a general plan of improvement for

the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of and which shall run with title to the real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns.

ARTICLE I **DEFINITIONS**

The terms in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Activity Card(s)": Those certain cards which are issued by the Association in accordance with the terms and conditions set forth in Section 2.2 and which confer upon the holder rights of access to and use of recreational facilities and other Common Areas within the Properties (subject to the payment of greens fees, admission fees, or other use fees established by the Board from time to time).

1.2. "Age-Qualified Occupant": Any Person (a) 40 years of age or older who owns and occupies a Dwelling Unit and was the original purchaser of the Dwelling Unit from the Declarant; or (b) 55 years of age or older who occupies a Dwelling Unit. An occupant of an Ancillary Unit, unless also an Age-Qualified Occupant of the primary Dwelling Unit on the Lot, shall not be an Age-Qualified Occupant.

1.3. "Ancillary Unit": Any detached structure on a Lot which is intended as a residential dwelling ancillary to the structure on the same Lot which serves as the primary Dwelling Unit for the Lot (e.g., an "in-law" or "guest" suite).

1.4. "Area of Common Responsibility": The Common Area, together with those areas, if any, which the Association does not own but which by the terms of Section 5.1 or other provisions of this Declaration, any Supplemental Declaration, or other applicable covenants, or by contract become the responsibility of the Association.

1.5. "Architectural Review Committee" or "ARC": The committee established by the Board to review all plans and applications for the construction and modification of improvements on the Properties (subject to the rights reserved to Declarant in Section 10.2) and to administer and enforce the architectural controls described in Article X.

1.6. "Articles": The Articles of Incorporation of Sun City Grand Community Association, Inc., as filed with the Arizona Corporation Commission.

1.7. “Association”: Sun City Grand Community Association, Inc., an Arizona nonprofit corporation, its successors or assigns.

1.8. “Base Assessment”: Assessments levied on all Lots subject to assessment under Section 9.9 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 9.1 and 9.3.

1.9. “Benefitted Assessment”: An assessment levied against a particular Lot or Lots for expenses incurred or to be incurred by the Association for the purposes described in Section 9.7.

1.10. “Board of Directors” or “Board”: The body responsible for establishing the operational and corporate policies of the Association and for overseeing their implementation and enforcement. The members of the Board shall be selected as provided in the By-Laws.

1.11. “Builder”: Any Person purchasing one or more Lots to construct Dwelling Units thereon for later sale to Class “A” Members or one or more Lots or parcels of land within the Properties to subdivide, develop, and/or resell in the ordinary course of such Person’s business.

1.12. “By-Laws”: The By-Laws of Sun City Grand Community Association, Inc., as they may be amended from time to time.

1.13. “CARE Fee”: The fee paid by an Owner upon conveyance of a Lot as further discussed in Section 9.13.

1.14. “Class “B” Control Period”: The period during which the Class “B” Member is entitled to appoint a majority of the Board members. The Class “B” Control Period shall expire upon the first to occur of the following:

(a) when 100% of the Maximum Lots have certificates of occupancy issued thereon and have been conveyed to Class “A” Members;

(b) when the Class “B” membership terminates;

(c) December 31, 2045; or

(d) when, in its discretion, the Class “B” Member so determines.

1.15. “Common Area”: All real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including easements held by the Association for those purposes. The term shall include the Exclusive Common Area, as defined below, and may include, without limitation, recreational facilities, entry features, signage, landscaped medians, rights of way, lakes, ponds, and land operated as a golf course, if any.

1.16. “Common Expenses”: The actual and estimated expenses incurred or anticipated to be incurred by the Association, including, without limitation (a) expenses incurred for the general benefit of all Owners and occupants of Lots, (b) the In Lieu Payments (defined in

Section 4.18 below) to the Maricopa County Municipal Water Conservation District Number One pursuant to the MWD Agreement (defined in Section 4.18 below), and (c) expenses for Board approved capital expenditures and any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles.

1.17. “Community-Wide Standard”: The standard of conduct, maintenance, or other activity required within the Properties. Such standard may contain both objective and subjective elements. For as long as the Declarant owns any portion of the property described in Exhibit “A.” it shall have the authority to establish the subjective elements of the Community-Wide Standard. The objective and subjective elements of the Community-Wide Standard shall be determined by the Board, subject to any specific requirements set forth in the Design Guidelines. After the Declarant no longer owns any of the property described in Exhibit “A.” the Board shall have the authority to establish the subjective elements of the Community-Wide Standard. The Community-Wide Standard may evolve as development progresses and as the needs and demands of the Sun City Grand community change.

After Declarant no longer owns any property described in Exhibit “A.” the Community-Wide Standard shall be the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties at the subject point in time, as determined exclusively by the Board, or by the ARC (defined herein) with the approval of the Board.

1.18. “Covenant to Share Costs”: Any declaration of easements and/or covenant to share costs executed by Declarant or the Association and recorded in the Office of the County Recorder which creates easements for the benefit of the Association and the present and future owners of real property subject to such Covenant to Share Costs and/or which obligates the Association and such owners to share the costs of maintaining certain property described therein.

1.19. “Declarant”: Del Webb Home Construction, Inc., an Arizona corporation, or any successor, successor-in-title, or assign of Del Webb Home Construction, Inc., who has or takes title to any portion of the property described in Exhibit “A” for the purpose of development and/or resale in the ordinary course of business and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.20. “Design Guidelines”: The architectural, design, development, landscaping, and other guidelines, standards, controls, and procedures, including but not limited to, application and plan review procedures, adopted pursuant to Article X and applicable to the Properties.

1.21. “Dwelling Unit”: Any building or structure or portion of any building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a single family, including by way of illustration but not limitation, condominium units, townhome units, cluster homes, patio or zero lot line homes, and single family detached houses, but excluding any rental apartments within any apartment or rental structure or complex. Notwithstanding the above, an Ancillary Unit shall not be a separate Dwelling Unit but, instead, shall be deemed a part of the building or structure serving primarily as the Dwelling Unit on the Lot.

1.22. “Exclusive Common Area”: A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article II.

1.23. “Governing Documents”: A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, the Use Restrictions, and any other rules or regulations enacted by the Association with respect to the Properties, as each may be amended from time to time.

1.24. “Lot”: A portion of the Properties, whether improved or unimproved (other than Common Area, common property of any Neighborhood Association, property dedicated to the public, and any Private Amenity), which may be independently owned and conveyed and which is intended to be developed, used, and occupied with an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Dwelling Unit, thereon. The term shall include, by way of illustration but not limitation, condominium units, townhome units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such. In the case of any structure containing multiple Dwelling Units, each Dwelling Unit shall be deemed to be a separate Lot.

Prior to recordation of a subdivision plat, a parcel of vacant land on which improvements are under construction shall be deemed to contain the number of Lots designated for residential use for such parcel on the applicable preliminary plat, or the site plan approved by Declarant, whichever is more current. Until a preliminary plat or site plan has been approved, such parcel shall contain the number of Lots set by Declarant in conformance with the Master Plans.

1.25. “Master Plans”: The plans for the development of Sun City Grand as set forth in that certain Development Agreement by and between the City of Surprise, Arizona, and Del Webb Home Construction, Inc., recorded on February 28, 1994, as Document No. 94-0162702, in the Office of the County Recorder of Maricopa County, Arizona, as assigned and amended, and as they may be amended, updated, or supplemented from time to time. The Master Plans encompass the property described in Exhibit “A.”

1.26. “Maximum Lots”: The maximum number of Lots approved for development within Sun City Grand under the Master Plans, as amended from time to time; provided, however, that nothing in this Declaration shall be construed to require the Declarant to develop the maximum number of Lots approved. The Maximum Lots as of the date of this Declaration is 10,410 Lots.

1.27. “Member”: A Person entitled to membership in the Association. Every Owner, as defined in Section 1.37, shall be a Member of the Association, as further described in Section 3.2.

1.28. “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.29. “Mortgagee”: A beneficiary or holder of a Mortgage.

1.30. “Neighborhood”: Any residential area within the Properties which is designated as a Neighborhood, whether or not governed by a Neighborhood Association, as more particularly described in Section 3.4. By way of illustration and not limitation, a townhome development, cluster home development, or single-family detached housing development might each be designated as a separate Neighborhood, or may be combined as one Neighborhood. A Neighborhood may be comprised of more than one housing type. In addition, a parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

1.31. “Neighborhood Assessments”: Assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 9.1 and 9.4.

1.32. “Neighborhood Association”: An owners’ association having jurisdiction over a specific Neighborhood concurrent with, but subordinate to, the Association.

1.33. “Neighborhood Expenses”: The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners of Lots within a particular Neighborhood or Neighborhoods, which may include reasonable reserves, as the Board may specifically authorize and as may be authorized herein or in a Supplemental Declaration applicable to a Neighborhood.

1.34. “Neighborhood Representative”: The representative selected by the Members within a Neighborhood to represent the Neighborhood in Association matters other than those requiring a vote of the membership. An alternate Neighborhood Representative may carry out the responsibilities of the Neighborhood Representative in his or her absence.

1.35. “Occupy,” “Occupies,” or “Occupancy”: Such terms, or any derivative thereof, shall mean staying overnight in a particular Dwelling Unit for at least 90 days in the subject 12-month period. Notwithstanding anything contained herein to the contrary, for purposes of determining whether an occupant of a Dwelling Unit is an Age Qualified Occupant or a Qualified Occupant for purposes of this Declaration, the occupant shall not be required to actually occupy his or her Dwelling Unit for 90 days before becoming an Age Qualified Occupant or a Qualified Occupant. Rather, the occupant will be deemed an Age Qualified Occupant or a Qualified Occupant, as applicable, for purposes of the year following his or her acquisition if such occupant (i) acquires or leases such Dwelling Unit with the intent of staying overnight in such Dwelling Unit for at least 90 days in the 12-month period following his or her acquisition and (ii) meets the other requirements for being an Age Qualified Occupant or a Qualified Occupant. In the case of an occupant that leases a Dwelling Unit, a lease having a term of at least 90 days shall constitute evidence of the occupant’s intent to occupy the Dwelling Unit for the required period (assuming that the lessee intends to occupy the Dwelling Unit for such 90 day period).

1.36. “Office of the County Recorder”: The Office of the County Recorder of Maricopa County, Arizona.

1.37. “Owner”: Cumulatively, all Persons who hold the record title to any Lot. The term “Owner” shall not include Persons holding an interest merely as security for the performance of an obligation, in which case the equitable owner will be considered the Owner.

1.38. “Person”: A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.39. “Plans”: The architectural and land use plans and specifications required to be submitted with applications for approval of proposed work under Article X.

1.40. “Private Amenity”: Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise. For example, any golf course and all related and supporting facilities and improvements which are owned and operated by Persons other than the Association shall be a Private Amenity. Any property constituting a Lot, Dwelling Unit, or Common Area hereunder shall not be a Private Amenity.

1.41. “Properties”: The real property described in Exhibit “A.”

1.42. “Qualified Occupant”: Any of the following Persons occupying a Dwelling Unit:

(a) any Age-Qualified Occupant;

(b) any Person 19 years of age or older occupying a Dwelling Unit with an Age-Qualified Occupant; and

(c) any Person 19 years of age or older who occupied a Dwelling Unit with an Age-Qualified Occupant and who continues, without interruption, to occupy the same Dwelling Unit after termination of the Age-Qualified Occupant’s occupancy thereof.

Notwithstanding the above, an occupant of an Ancillary Unit, unless also a Qualified Occupant of the primary Dwelling Unit on the Lot, shall not be a Qualified Occupant.

1.43. “Special Assessment”: Assessments levied against all Owners to cover unanticipated expenses or expenses in excess of those budgeted, as described in Section 9.6.

1.44. “Sun City Grand”: The Properties, as defined above, together with such other property as may be developed in accordance with the Master Plans.

1.45. “Supplemental Declaration”: An amendment or supplement to this Declaration which among other things, may subject additional property to this Declaration, identify Common Area or Exclusive Common Area within the Properties, and/or impose, expressly or by reference, additional restrictions and obligations on the land described therein.

1.46. “Use Restrictions”: The rules and use restrictions attached as Exhibit “C” and incorporated by reference, as they may be modified, canceled, limited, or expanded under Article XI.

ARTICLE II
PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules, regulations, or policies regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Dwelling Units and their guests, and rules limiting the number of occupants and guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area pursuant to Section 4.2;
- (e) The right of the Association to dedicate or transfer all or any part of the Common Area to governmental entities pursuant to Section 4.5;
- (f) The right of the Board to permit entry upon the Common Area, or to grant licenses permitting the use of the Common Area, by third parties for purposes deemed, in the discretion of the Board, to benefit the Properties;
- (g) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, or other fees for the use of any recreational facility situated upon the Common Area;
- (h) The right of the Board to permit use of any recreational facilities situated upon the Common Area by Persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board (including, but not limited to, residents of life care facilities and rental apartments that are subject to a Covenant to Share Costs with the Association);
- (i) The right of the Board to create, enter agreements with, grant easements to, and transfer portions of the Common Area to tax-exempt organizations under Section 4.13;
- (j) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (k) The right of the Maricopa Water District to file a lien upon any Common Area in the event of the failure of the Declarant or the Association to make "In Lieu Payments," as more particularly described in Section 4.18;

(l) The rights of certain Owners to the exclusive use of those portions of the Common Area designated as Exclusive Common Areas, as more particularly described in Section 2.4;

(m) The right of the Association to rent, lease, or make available without charge for any purpose (including, without limitation, public meetings of governmental authorities) any portion of any clubhouse and other recreational facilities within the Common Area, as determined by the Board, to any Person and such Person's family, guests and/or invitees; and

(n) The requirement that access to and use of recreational facilities within the Properties shall be subject to the presentation of a valid Activity Card issued by the Association.

2.2. Activity Cards.

(a) Issuance by the Board. One Activity Card shall be allocated to each Qualified Occupant of a Lot, up to a maximum of two Activity Cards per Lot. No Activity Cards shall be allocated to any Lot which is not occupied by a Qualified Occupant. The Board shall determine entitlement to Activity Cards on an annual basis. If the Lot continues to be occupied by a Qualified Occupant and all applicable assessments and other charges pertaining to the Lot have been paid, the Activity Card(s) allocated to such Lot shall be renewed annually without charge. The Board may establish policies, limits, and charges with regard to the issuance of additional cards and guest privilege cards.

(b) Assignment of Rights. Except as may be expressly provided in a Covenant to Share Costs, the right to an Activity Card is based upon occupancy of a Lot. If, and so long as, a Lot is occupied solely by Persons other than the Owner, pursuant to a lease or otherwise, then (i) the Owner shall not be entitled to receive an Activity Card, and (ii) the right of any occupant to receive an Activity Card shall depend on his or her status as a Qualified Occupant. Any Owner who leases or otherwise transfers occupancy of his or her Lot shall provide the Association with immediate written notice thereof and shall surrender to the Association his or her previously issued Activity Card. Activity Cards shall be surrendered by any holder who ceases to occupy a Lot, or at any time upon written notification from the Association that the holder no longer is entitled to hold an Activity Card.

2.3. Age Restriction. Sun City Grand is intended to provide housing primarily for persons 55 years of age or older. The Properties shall be operated as an age restricted community in compliance with all applicable State and Federal laws. No person under 19 years of age shall stay overnight in any Dwelling Unit for more than 90 days in any calendar year.

Subject to Section 14.10, under which Persons between the ages of 40 and 55, inclusive, who purchase Lots from the Declarant are permitted to occupy Dwelling Units, each Dwelling Unit, if occupied, shall be occupied by at least one Person 55 years of age or older; provided, once a Dwelling Unit is occupied by an Age-Qualified Occupant, other Qualified Occupants of that Dwelling Unit may continue to occupy that Dwelling Unit, regardless of the termination of the Age-Qualified Occupant's occupancy, if at least 80% of the Dwelling Units within the Properties are occupied by at least one Person 55 years of age or older. In any event, at all times,

at least 80% of the Dwelling Units within the Properties shall be occupied by at least one Person 55 years of age or older.

Further, a Qualified Occupant is eligible to purchase a Dwelling Unit within Sun City Grand if the Qualified Occupant wishes to relocate to a different Dwelling Unit after his/her legal separation or divorce from, or the death of, the Age-Qualified Occupant so long as at least 80% of the Dwelling Units within the Properties are occupied by at least one Person 55 years of age or older. If a Qualified Occupant wishes to relocate to a different Dwelling Unit under such circumstances, he or she must provide to the office of the Association, a copy of the purchase contract for the new Dwelling Unit within Sun City Grand no later than 90 days after (i) the original Dwelling Unit is sold or (ii) if the original Dwelling Unit is not sold, the date the divorce decree is final or the legal separation is granted, whichever is applicable. If a Qualified Occupant does not provide a purchase contract or lease within such 90-day period, he or she shall lose his/her status as a Qualified Occupant.

The Board may establish policies and procedures from time to time as necessary to maintain its status as an age restricted community under State and Federal law. The Association shall provide, or contract for the provision of, those facilities and services designed to meet the physical and social needs of older Persons as may be required under such laws. The Board shall have the power and authority to enforce this Section 2.3 by any legal or equitable means available, as the Board deems appropriate.

2.4. Exclusive Common Area. The Declarant reserves the right to designate certain portions of the Common Area as Exclusive Common Area as long as it owns any property described in Exhibit "A" to this Declaration. Exclusive Common Area shall be Common Area that is reserved for the exclusive use or primary benefit of Owners, occupants, and invitees of Lots within a particular Neighborhood or Neighborhoods. Exclusive Common Area may include, without limitation, recreational facilities, landscaped rights of way and medians, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Area shall be assessed as a Neighborhood Assessment in addition to the Base Assessment against the Owners of Lots in those Neighborhoods to which the Exclusive Common Area is assigned.

The Declarant may designate Exclusive Common Area or change such designation by recording a Supplemental Declaration with the Office of the County Recorder indicating the Exclusive Common Area and the Neighborhood or Neighborhoods to which it is assigned. In addition, by recording a Supplemental Declaration, the Association may designate Common Area as Exclusive Common Area upon a majority vote of the Class "A" Members in the Association or change such designation upon a majority vote of Class "A" Members in each affected Neighborhood (i.e., the Neighborhood(s) within which the Exclusive Common Area is being designated or from which it is being redesignated). In addition, as long as the Declarant owns any property described in Exhibit "A" to this Declaration, its consent shall be required for any designation or change in designation of Exclusive Common Area. The Association may permit Owners of Lots in other Neighborhoods to use all or a portion of Exclusive Common Area assigned to other Neighborhoods upon payment of reasonable use fees which shall offset the Neighborhood Expenses attributable to such Exclusive Common Area.

ARTICLE III
ASSOCIATION FUNCTION, MEMBERSHIP, AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for compliance with and enforcement of this Declaration and such reasonable rules regulating use of the Properties as are adopted in accordance with the Governing Documents. The Association also shall be responsible for administering, monitoring compliance with, and enforcing the Design Guidelines after such time as the Declarant transfers its authority to enforce the Design Guidelines to the Association or when otherwise designated by the Declarant. The responsibilities of the Association may be delegated to committees or the Association may engage outside Persons to monitor and enforce this Declaration (including, without limitation, the Use Restrictions) and the Design Guidelines in accordance with policies established by the Board. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles, and Arizona law.

3.2. Membership. Every Owner shall be a Member of the Association; provided, there shall be only one membership per Lot. If a Lot is owned by more than one Person, all Persons comprising the Owner shall share the privileges of membership, subject to (i) reasonable Board regulation, (ii) the limitations set forth in, and such reasonable fees as may be established under Article II, and (iii) the restrictions on voting set forth in Section 3.3 and in the By-Laws. All Persons comprising a single Owner shall be jointly and severally obligated to perform the responsibilities of such Owner. The membership rights of an Owner which is a corporation, partnership, or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual having apparent authority or who is designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A." The Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 3.2; provided, there shall be only one Class "A" vote per Lot.

(b) Class "B." The Class "B" Member shall be, collectively, the Declarant and any Builder(s) who are Owners. The Class "B" Member shall not vote on a per Lot basis. The rights of the Class "B" Member, including the right to disapprove actions of the Board and committees, are specified in this Declaration and the By-Laws and, unless otherwise specified, shall be exercised by the Declarant in its sole and absolute discretion. The Class "B" membership shall cease and be converted to Class "A" membership upon the earliest of the following:

- (i) two years after the expiration of the Class "B" Control Period;
- (ii) when 100% of the Maximum Lots have been conveyed to Class "A" Members; or

(iii) when, in its discretion, the Declarant so determines.

From and after the termination of the Class "B" membership, each of the Persons comprising the Class "B" Member shall be deemed to be Class "A" Members and shall be entitled to one vote for each Lot in which it holds the interest required for membership under Section 3.2.

(c) Exercise of Voting Rights. Members may vote as provided in the By-Laws. The Board shall determine whether votes shall be cast in person, by mail, electronically, or by such other means as may be determined by the Board from time to time. If there is more than one Person comprising the Owner of a particular Lot, the vote for such Lot shall be exercised as all Persons comprising the Owner determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such notice to the Association, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

3.4. Neighborhoods and Neighborhood Representatives.

(a) Neighborhoods. Every Lot shall be located within a Neighborhood. The Lots within a particular Neighborhood may be subject to additional covenants. In addition, if (but only if) required by law or by the Declarant, the Owners of Lots within a particular Neighborhood shall be members of a Neighborhood Association.

Any Neighborhood may, upon the affirmative vote, written consent, or a combination thereof, of a majority of the Class "A" Members in the Neighborhood, request that the Association provide an increased level of service or special services for the benefit of Lots in such Neighborhood. In such event, the Association may, but shall not be obligated to, provide such service or services. If provided, all costs shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment pursuant to Article IX. The Neighborhood Representative shall communicate all such requests to the Board.

Each Neighborhood shall hold meetings as required by the Board or upon the petition of at least 10% of the Class "A" Members in the Neighborhood. All Owners in the Neighborhood shall be entitled to attend Neighborhood meetings. The Neighborhood Representative shall preside over Neighborhood meetings and shall place such issues on the agenda as the Board may determine. The presence of at least 15% of the Class "A" Members in a Neighborhood shall constitute a quorum at any Neighborhood meeting.

Exhibit "A" to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration, shall initially assign the property described therein to an existing or newly created Neighborhood by name. Subject to any applicable law, the Declarant, as long as it owns any property described in Exhibit "A," may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Neighborhood boundaries. After such time, the Association may redesignate Neighborhood boundaries upon the affirmative vote of a majority of the Class "A" Members in each affected Neighborhood so long as such redesignation does not overburden any Exclusive Common Area; provided, the consent of the Declarant must be obtained for such redesignation so long as the Declarant owns any Lots within either of the affected Neighborhoods.

(b) Neighborhood Representative. Each Neighborhood shall be represented by a Neighborhood Representative and an alternate. Neighborhood Representatives shall preside over meetings of their respective Neighborhood and shall be responsible for communication between the Owners in the Neighborhood and the Board. Neighborhood Representatives also shall attend Neighborhood Representative meetings when requested by the Board. An alternate Neighborhood Representative shall act in the absence of the Neighborhood Representative. The alternate Neighborhood Representative may attend meetings of the Neighborhood Representatives but shall not be able to formally represent his or her Neighborhood except in the absence of the Neighborhood Representative.

The Board shall establish rules and procedures governing the selection or election of the Neighborhood Representatives, the length of the term to be served by Neighborhood Representatives, and the limitations, if any, on the ability to serve consecutive terms. Such rules and procedures may be revised by the Board from time to time. Notwithstanding the above, the Neighborhood Representative for any particular Neighborhood shall be selected by the Board until 50% of the Dwelling Units planned for such Neighborhood have been constructed and are owned by Class "A" Members. Any Owner or Qualified Occupant of a Dwelling Unit within a Neighborhood shall be eligible to serve as the Neighborhood Representative or alternate for such Neighborhood.

Any Neighborhood Representative or alternate may be removed, with or without cause, by the Board if it determines that the Neighborhood Representative or alternate is not satisfactorily representing his or her Neighborhood. Neighborhood Representatives and alternates are deemed automatically removed if they no longer own or are a Qualified Occupant of a Dwelling Unit in the Neighborhood. If at any time a Neighborhood does not have a Neighborhood Representative and alternate, the Board shall select a replacement to fill the vacancy.

ARTICLE IV **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the properties described in Exhibit "A," personal property, and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed, including but not limited to, restrictions governing the use or maintenance of such property.

The Declarant shall convey the initial Common Area to the Association prior to or concurrent with the conveyance of the first Lot to a Class "A" Member.

4.2. Enforcement. The Board may impose sanctions for violation of this Declaration, the By-Laws, or any rule or regulation, after notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines (In the event that any occupant, guest, or invitee of a Lot violates any provision of any of the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(b) suspending an Owner's right to vote;

(c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association; and

(e) levying Benefitted Assessments to cover costs incurred or to be incurred in bringing a Lot into compliance in accordance with Section 9.7(b).

In addition, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance(s) of the City of Surprise or the County of Maricopa, Arizona) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedures set forth in Article XVI or in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of any of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall be obligated to investigate allegations of violations of any covenant, restriction, or rule set forth in any of the Governing Documents. Following such investigation, the decision to take or not take enforcement action shall, in each case, be in the discretion of the Board, in the exercise of its business judgment. Without limiting the generality of the Board's discretion, if the Board reasonably determines that a covenant, restriction, or rule is, or is likely to be construed as, inconsistent with the applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action, the Board shall not be obligated to take such action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision at a later time or under other circumstances, or estop the Association from enforcing any other covenant, restriction, or rule.

Notwithstanding the above, if, in the discretion of the Declarant as long as Declarant owns any property described in Exhibit "A," the Association fails to take appropriate action to enforce any provision of the Governing Documents in accordance with its rights and responsibilities, the Declarant may take such enforcement action on behalf of the Association.

Declarant shall not take such action without first providing the Association written notice and a reasonable opportunity to take such action on its own.

4.3. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.4. Governmental Interests. So long as the Declarant owns any property described in Exhibit "A," the Declarant may designate sites within the Properties for fire, police and utility facilities, public schools and parks, and other public facilities in accordance with the Master Plans and applicable laws. The sites may include Common Area if otherwise permitted by the Master Plans. Such property shall be exempt from assessment as provided in Section 9.12.

4.5. Dedication of Common Area. The Association, in the exercise of the Board's business judgment, may dedicate or grant easements over portions of the Common Area to any local, state, or federal governmental entity or any utility company. This right shall not be construed as a limitation upon the right of the Board to permit entry upon the Common Area or to grant licenses permitting the use of the Common Area by third parties for purposes deemed, in the discretion of the Board, to benefit the Properties.

4.6. Assumption of Risk. The Association may, but shall not be obligated to, sponsor certain activities or provide facilities designed to promote the health, safety, and welfare of Owners and occupants. Notwithstanding anything contained herein or in any of the Governing Documents, neither the Association, the members of the Board, the officers of the Association, the management company of the Association, nor the Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Properties, including all Common Area and all recreational facilities, if any.

Neither the Association, the members of the Board, the officers of the Association, the Association's management company, nor the Declarant shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Properties. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of utility lines or utility sub-stations and further acknowledges that neither the Association, the members of the Board, the officers of the Association, the Association's management company, nor the Declarant have made any representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the members of the Board, the officers of the Association, the management company of the Association, or the Declarant to protect or further the health, safety, or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

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

4.7. Security. The Association may maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be; provided, however, unless otherwise specifically indicated in this Declaration, the Association shall not be obligated to maintain or support such activities.

Neither the Association, its officers, the Board, the Association's management company, nor the Declarant shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association, its officers, the Board, the Association's management company, nor the Declarant, shall be held liable for any loss or damage for failure to provide adequate security or for the ineffectiveness of any security measures undertaken.

All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge that neither the Association, its officers, the Board, the Association's management company, the Declarant, nor the Architectural Review Committee (as described in Article X) represent or warrant that any patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security system designated by or installed according to guidelines established by the Declarant or the Architectural Review Committee may not be compromised or circumvented; nor that any patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security systems will in all cases provide the detection or protection for which the system is designed or intended.

All Owners and occupants of any Lot and all tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its officers, the Board and committees, the Association's management company, or the Declarant, have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire

protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Properties.

4.8. Powers of the Association Relating to Neighborhood Associations. No action of any Neighborhood Association shall become effective or be implemented until and unless the Association shall have been given written notice of such proposed action and shall not have disapproved of the proposed action, or unless such action is in strict compliance with guidelines set by the Board. The Association shall have ten business days from receipt of the notice to disapprove any proposed action. The Association may disapprove any action taken or contemplated by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard.

The Association also may require specific action to be taken by any Neighborhood Association to fulfill its obligations and responsibilities under this Declaration or any other applicable covenants. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association, and (b) require that a proposed Neighborhood budget include the cost of such work.

Any action specified by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association.

To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Lots in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action. Such assessments shall be Benefitted Assessments as described in Section 9.7. and shall be subject to all collection and lien rights provided in Article IX.

4.9. Recycling Programs. The Board may establish a recycling program and recycling center within the Properties, and in such event all occupants of Dwelling Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

4.10. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By

way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.

4.11. Change of Use of Common Area. The Board may change the use of any portion of the Common Area and construct, reconstruct, or change the buildings and other improvements thereon in any manner necessary to accommodate the new use of the Common Area. Any new use shall be for the benefit of the Owners and not inconsistent with the then effective Master Plans. Any change in use of the Common Area shall be subject to approval by the Declarant as long as it owns any property described in Exhibit "A," but shall not be subject to approval by any other Owner.

4.12. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth in Article V. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.13. Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations, including, but not limited to, organizations that provide facilities and services designed to meet the physical and social needs of older persons, for the benefit of the Properties, the Association, its Members and residents. The Association may contribute money, real or personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and shall be included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, as may be amended from time to time.

4.14. Relations with Adjacent Properties. Adjacent to or in the vicinity of the Properties are properties which have been or, in the future, may be developed as independent commercial and/or residential areas (including, but not limited to, rental apartments, life care facilities and retail or other business areas). The Declarant or the Association may enter into a Covenant to Share Costs with all or any of the owners of such adjacent or nearby commercial and/or residential areas which allocates access, use of Common Area, maintenance responsibilities, expenses, and other matters between the Association and such property owners.

4.15. Amenities Reciprocal Use Agreements. The Association may from time to time, enter into Amenities Reciprocal Use Agreements ("Amenities Agreement(s)") with other master planned communities which are age-restricted pursuant to the Federal Fair Housing Act. Under such an Amenities Agreement, Persons associated with such other master planned communities shall be entitled to use the Association's recreational facilities and other amenities, and the

Members and their guests, as described in such agreements, shall be entitled to use the recreational facilities and other amenities in such other master planned communities to the extent specifically identified in the Amenities Agreement. Amenities Agreements shall be subject to termination in the discretion of the Board.

All Members and their guests, as described in the Amenities Agreements, shall be entitled to enjoy the benefits of any Amenities Agreements to which the Association is a party, to the extent provided in the Amenities Agreement. In consideration for such rights, if any, each Member shall be responsible for user fees for the use of facilities by such Member and such Member's guests, in accordance with any applicable Amenities Agreement. Rights to use any or all recreational facilities and other amenities shall be subject to any priorities for use established under the Amenities Agreements and any rules and regulations established by the parties to such Amenities Agreements.

The Association may enter into more than one Amenities Agreement and may amend Amenities Agreements for any purpose, including but not limited to, adding additional parties in accordance with the terms of such Amenities Agreements.

4.16. Maintenance of Underground Storage Facilities. The Declarant shall maintain the underground water storage facilities until such time as it transfers ownership and responsibility for operation and maintenance of such facilities to the Association. The Association shall have no rights to operate or maintain the underground storage facilities prior to the same being transferred or assigned by the Declarant. The Association shall accept the underground storage facilities in their then current condition at the time the Declarant transfers them and shall have no claim against the Declarant for any malfunction of or latent defects in the underground storage facilities; provided, however, the Declarant shall transfer the underground storage facilities in working condition as determined by local industry standards and not subject to patent defects.

Each golf course which is served by the underground water storage facilities, whether a Private Amenity or owned by the Association as Common Area, shall contribute to the cost of operating and maintaining such facilities. The allocation of costs between and among such golf courses shall be based upon the water usage of each golf course, respectively, relative to the total water usage of all the golf courses, collectively.

4.17. Compliance with Development Agreements. The development and operation of Sun City Grand is subject to various development agreements between and among Declarant and its affiliates, and various governmental authorities, including, but not limited to, the Master Plans and the MWD Agreement (defined in Section 4.18 below) (collectively, the "Development Agreements"), as amended or may be amended from time to time. The Association shall comply with all terms and conditions of the Development Agreements, as applicable, and shall accept responsibility for and shall comply with any obligations of the Declarant under the Development Agreements which are assigned to it by the Declarant.

4.18. Maricopa Water District Agreement. The development and operation of Sun City Grand is subject to that certain agreement between Del Webb Home Construction, Inc., and Maricopa County Municipal Water Conservation District Number One ("MWD"), evidenced of record by that certain Memorandum of Agreement dated May 7, 1996, recorded on May 17,

1996 as Document No. 96-0340938, and re-recorded on July 23, 1996 as Document No. 96-0513492, with the Office of the County Recorder, as amended from time to time (the "MWD Agreement"). Pursuant to the MWD Agreement, Declarant and the Association, as the Declarant's successor in interest, are obligated to pay to MWD an amount in lieu of but equal to the taxes and assessments of MWD that would otherwise have been applicable to portions of the Properties had such lands not been retired from irrigation (the "In Lieu Payments").

The MWD Agreement provides for the delivery of water to Declarant and the Association, as its successor in interest, for use on golf courses and Common Areas, exclusive of dedicated roads and other dedicated rights-of-way ("Turf Lands"), for underground storage recovery projects, and for the payment of the In Lieu Payments. The payment of the In Lieu Payments is a condition to the delivery of water to the Turf Lands within the Properties. In the event the Declarant or the Association as the Declarant's successor-in-interest fails to pay when due the In Lieu Payments, or any portion thereof, MWD has the right to place a lien upon the Turf Lands and, after notice and non-payment of the In Lieu Payments, to foreclose the lien as a deed of trust security lien in accordance with Arizona law. The MWD Agreement also provides that MWD shall accept the In Lieu Payments in lieu of levying taxes or assessments on any land in the Properties and that Declarant, and its successors in interest to the Turf Lands, may participate in MWD elections, with voting rights limited to the total acreage comprising the Turf Lands. No other owner of subdivided land within the Properties may exercise any rights existing by virtue of ownership of land within a subdivision to vote in MWD elections.

The Association shall comply with all terms of the MWD Agreement, as applicable, and shall accept responsibility for and shall comply with any obligations of the Declarant under the MWD Agreement which are assigned to it by the Declarant. The In Lieu Payments shall constitute Common Expenses of the Association and shall be funded by the levy of Base Assessments on all Lots.

This Section 4.18 shall inure to the benefit of MWD and shall not be terminated or amended without the prior written consent of MWD.

ARTICLE V **MAINTENANCE**

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all Common Area;
- (b) all landscaping and other flora, parks, signage, structures, parking areas, and improvements, including any bike and pedestrian pathways and trails, situated upon the Common Area;
- (c) all water service facilities and drainage facilities within the Area of Common Responsibility, including lakes, ponds, and other water features;
- (d) all arterial sidewalks and any sidewalks that are not the responsibility of any Owner, any Neighborhood Association, or any local government entity;

(e) walls and fences constructed by the Declarant which serve as perimeter walls for the Properties or which separate any Lot from Common Area or any golf course, whether or not located on a Lot; provided, the allocation of responsibility for the maintenance and repair of party walls and party fences is set forth in Section 5.5;

(f) landscaping, irrigation systems, and signage within public streets and rights-of-way within or abutting the Properties to the extent maintenance by any local government is not consistent with the Community-Wide Standard, and any streetlights that are not included in a streetlight improvement district;

(g) landscaping and other flora within any public utility easements and scenic easements within the Common Area (subject to the terms of any easement agreement relating thereto);

(h) any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, any plat of any portion of the Properties, or any contract or agreement for maintenance thereof entered into by the Association; and

(i) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property shall be identified by written notice from the Declarant to the Association. The Association's responsibility shall terminate at such time as Declarant revokes the privilege of use and enjoyment by written notice to the Association.

The Association may, but shall not be obligated to, assume maintenance responsibility for property within any Neighborhood, the responsibility for which lies with a Neighborhood Association, in addition to any property which the Association is obligated to maintain by this Declaration or any Supplemental Declaration. Such responsibility shall be assumed either by agreement with the Neighborhood Association or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of such maintenance shall be assessed as a Neighborhood Assessment against the Lots within the Neighborhood for which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons. All costs associated with maintenance, repair and replacement of Exclusive Common Area shall be a Neighborhood

Expense assessed as a Neighborhood Assessment against the Lots within the Neighborhood(s) to which the Exclusive Common Area is assigned.

If, in the discretion of the Declarant, and as long as Declarant owns any property described in Exhibit "A," the Association fails to perform its maintenance responsibilities or enforce the maintenance responsibilities of Owners in the manner required by the Declaration, Declarant may cause such maintenance to be performed and, in such event, the Association shall reimburse Declarant for all costs incurred. Declarant shall not take such action without first providing the Association written notice and a reasonable opportunity to perform the required maintenance.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Lot, Dwelling Unit, and all other structures, parking areas, landscaping, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, the Design Guidelines and the Use Restrictions, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

Each Owner shall be responsible for maintaining and repairing any sidewalk adjacent to any portion of his or her Lot in accordance with the Community-Wide Standard. In the event an Owner fails to maintain or repair the sidewalks adjacent to his or her Lot, the Association may, but shall not be obligated to, take any enforcement action provided in this Declaration, including levying Benefited Assessments.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 9.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Neighborhood's Responsibility. Upon Board resolution, the Owners of Lots within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining, any signage, entry features, right-of-way, and open space between the Lots within the Neighborhood and adjacent public roads and private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same. As an alternative, the Board may resolve that such maintenance shall be performed by the applicable Neighborhood Association, if any.

All maintenance required of a Neighborhood Association under this Declaration or any additional covenants or agreements shall be performed consistent with the Community-Wide Standard. If any Neighborhood Association fails to perform such maintenance, the Association may perform it and assess the costs against all Lots within such Neighborhood as provided in Section 9.7.

5.4. Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, painting, plant replacement, weeding, and trimming, as the Board may determine to be necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board.

Portions of the Properties are environmentally sensitive and/or may provide greater aesthetic value than other portions of the Properties. The Board or the Declarant, as long as it owns any property described in Exhibit "A," may establish a higher Community-Wide Standard for such areas and require additional maintenance for such areas to reflect the nature of such property.

Notwithstanding anything to the contrary contained herein, neither the Association, any Owner, nor any Neighborhood Association shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5. Party Walls and Party Fences. Each wall and fence built by the Declarant or a Builder as part of the original construction on any Lot:

(a) any part of which is built upon or straddling the boundary line between two adjoining Lots or between a Lot and the Common Area; or

(b) which is constructed within five feet of the boundary line between adjoining Lots, between a Lot and the Common Area, between a Lot and any public street or other property not subject to this Declaration, or between the Common Area and any public street or other property not subject to this Declaration, has no windows or doors, and is intended to serve as a privacy wall; or

(c) which, in the reasonable determination of the Board, otherwise serves and/or separates two adjoining Lots or a Lot and the Common Area, regardless of whether constructed wholly within the boundaries of one Lot;

shall constitute a party wall or party fence (herein referred to as a "party structure").

The Owners of any Lot served by a party structure shall own that portion of the party structure lying within the boundaries of such Owner's Lot and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the party structure lying within the boundaries of the property adjoining his or her Lot. Each Owner shall be responsible for maintaining property insurance, as more particularly provided in Section 6.3, providing coverage for that portion of any party structure lying within the boundaries of such Owner's Lot and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss.

With respect to a party structure between Lots, the responsibility for the repair and maintenance of the party structure and the reasonable cost thereof shall be shared equally by the adjoining Lot Owners; provided, however, any damage to a party structure resulting solely from

the actions of any Owner shall be repaired at the sole cost of such Owner. To the extent damage to a party structure from fire, water, soil settlement, or other casualty is not repaired out of the proceeds of insurance, any affected Owner may restore it. If other Owners thereafter benefit from the party structure, they shall contribute to the restoration cost in equal shares without prejudice to any Owner's right to larger contributions from other users under any rule of law. Any Owner's right to contribution from another Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Any disputes between Owners with respect to maintenance or repairs of party structures shall be resolved in accordance with the procedures set forth in Article XVI.

With respect to party structures between Lots and Common Area, between Lots and any public street, and between Lots and other property not subject to this Declaration, the Association shall be responsible for all maintenance and repair thereof, subject to the provisions of Section 9.7(b), except that an Owner shall be responsible for painting and making cosmetic repairs to the portion of the party structure, other than any wrought iron comprising such party structure, facing his or her Lot. The Association shall be responsible for all maintenance and repair, including painting and cosmetic repairs, of all wrought iron comprising such party structures. The Association shall have an easement over any affected Lot to perform its maintenance responsibilities hereunder. Notwithstanding the above, unless otherwise agreed upon with the owner of property which is not subject to this Declaration, the Association shall maintain that portion of any party structure facing such property.

With respect to any party structure between Common Area and any public street or other property which is not subject to this Declaration, unless otherwise agreed upon with the owner of such property, the Association shall be solely responsible for maintaining and repairing such party structures.

The costs incurred by the Association in maintaining and repairing party structures pursuant to this Section shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from any Owner deemed to have caused the condition in need of repair pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

Notwithstanding the above, no Owner may remove a party structure or make structural or design changes to a party structure without first complying with the requirements set forth in Article X and gaining the approval of all Owners of affected Lots.

This Section 5.5 shall not apply to any party structure which separates the interiors of adjoining Dwelling Units. The rights of the Owners of adjoining Dwelling Units with regard to such party structures shall be governed by plats showing the boundaries of each of the adjoining Dwelling Units, and any specific covenants, conditions, and restrictions recorded with respect to such Dwelling Units.

ARTICLE VI
INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, the following types and amounts of insurance, if available at a reasonable cost, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(a) Blanket property insurance covering risks of physical loss on an “all-risk” basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair, and/or replacement in the event of a casualty. If such coverage is not available at a reasonable cost, then “broad form named perils” coverage may be substituted. Such insurance shall include coverage for flood and earth movement to the extent that such insurance is reasonably available.

In addition, the Association may, upon request of a Neighborhood Association, and shall, if so specified in a Supplemental Declaration applicable to the Neighborhood Association, obtain and continue in effect property insurance covering risks of physical loss on an “all risk” basis for insurable improvements in the Neighborhood; provided, the Association shall not be obligated to provide property insurance coverage for any Lot or Dwelling Unit, or the contents thereof. If such coverage is not available at a reasonable cost, then “broad form named perils” coverage may be substituted.

All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. Costs of property insurance obtained by the Association on the behalf of a Neighborhood shall be charged to the Owners of Lots within the benefitted Neighborhood as a Neighborhood Assessment;

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf and including coverage for owned and non-owned automobile liability. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least \$5,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost, and such additional coverage and higher limits would be obtained by a reasonably prudent person, the Association shall obtain the same. Notwithstanding the above, if the required limits are not available at a reasonable cost, lower limits, as determined in the Board’s business judgment, may be obtained;

(c) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(d) Directors and officers liability insurance or equivalent association liability insurance at limits determined in the Board’s business judgment;

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

(f) Such additional insurance as the Board, in its business judgment, determines advisable, which may include, without limitation, employee benefits liability insurance, boiler and machinery insurance, and building ordinance insurance.

6.2. Association Policy Requirements. Prior to the renewal of any insurance policy and at least annually, the Association shall arrange for a review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the Maricopa County, Arizona, area.

Except as otherwise provided in Section 6.1 with respect to property within a Neighborhood, premiums for all insurance on the Area of Common Responsibility shall be a Common Expense and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board reasonably determines that other treatment of the premiums is more appropriate.

The policies may contain a reasonable deductible as determined by the Board and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful conduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with Section 9.7.

(a) All insurance coverage shall be written by insurance companies licensed to do business in the State of Arizona and having a rating at A- or better in the financial category as established by A.M. Best's Insurance Reports. The Board may make exceptions to this requirement in the event that coverage is not reasonably available from such a company or if the Board, in its business judgment, elects to obtain insurance through a similarly reputable, but not rated company.

(b) All insurance coverage obtained under Section 6.1(a) shall:

(i) Be written with a company authorized to do business in the State of Arizona which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board requires;

(ii) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its Members. Insurance coverage secured on behalf of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Lots within the Neighborhood, and their Mortgagees, as their interests may appear;

(iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(iv) Include an agreed amount endorsement if the policy contains a co-insurance clause; and

(v) Contain replacement cost coverage.

(c) In addition, the Board shall secure, if reasonably available and as applicable, insurance policies providing the following:

(i) A waiver of subrogation as to any claims against the Association, the Association's Board, officers, employees, and its manager and the Owners;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement preventing the Association's insurance carrier from invoking its "other insurance" clause to obtain any contribution from any insurance maintained by individual Owners;

(iv) An endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) A cross liability provision;

(vi) A provision vesting the Board with exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss; and

(vii) A provision listing the Lot Owners as additional insureds under the policy.

6.3. Owner's Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full insurable replacement cost on all improvements on any Lot owned, less a reasonable deductible, unless either the Association carries such insurance (which they are not obligated to do hereunder) or a Neighborhood Association having jurisdiction over the Lot(s) carries such insurance.

Each Owner further covenants and agrees that in the event of damage to or destruction of the Dwelling Unit or any other structures on or comprising his or her Lot, he or she shall proceed

